1999

HOUSE JUDICIARY IV COMMITTEE

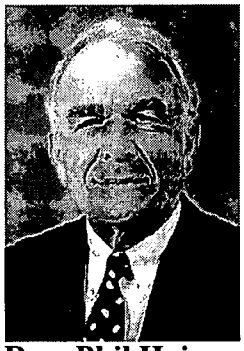
MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
1999 SESSION

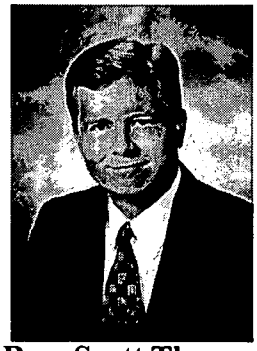
MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
BADDOUR, Phil Chairman	Elizabeth Kirkland Committee Assistant	715-0850	2301	31
HAIRE, Phil	Sara Jane Lennard	715-3005	419B	47
THOMAS, Scott	Dianne Dagenhart	733-5863	531	103
BOWIE, Joni	Sharon Gaudette	733-5877	538	53
CULPEPPER, Bill	Dot Crocker	715-3028	404	36
DECKER, Michael	Joanne Walters	733-5904	1021	40
EARLE, Beverly	Ann Raeford	733-5747	535	95
JEFFUS, Maggie	Mary Lee Robinson	733-5191	1013	4
JUSTUS, Larry	Carolyn Justus	733-5958	640	13
MCMAHAN, Ed	Sharon Cram	733-5661	1019	102
MOSLEY, Jane	Gennie Thurlow	733-5781	2221	16
POPE, Art	Betty Harrison	733-5809	539	101
SAUNDERS, Drew	Ruth Fish	733-5776	1219	82
TALLENT, Tim	Joyce Bulluck	733-5934	1104	26
Tim Hovis, Committee Counsel	Esther Manheimer, Committee Counsel	733-2578	545	

HOUSE JUDICIARY IV COMMITTEE

Representative Phil Baddour
Chairman



Rep. Phil Haire
Vice-Chairman



Rep. Scott Thomas
Vice-Chairman

Rep. Joni Bowie

Rep. Bill Culpepper

Rep. Michael Decker

Rep. Beverly Earle

Rep. Maggie Jeffus

Rep. Larry Justus

Rep. Ed McMahan

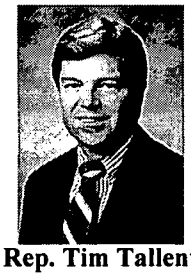
Rep. Jane Mosley

Rep. Chuck Neely

REPLACED BY ART POPE

4/13/99

Rep. Drew Saunders



Rep. Tim Tallent

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY IV Valid Through 22-JUL-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 14	ALLRED	CEMETERY CONSUMER PROTECTION	*S -REF TO COM ON COMMERCE	02-16-99	04-22-99
H 34=	HURLEY	LOSE CONTROL LOSE YOUR LICENSE	H -RE-REF COM ON JUDICIV	02-16-99	
H 50	HURLEY	FAYETTEVILLE TRAFFIC VIOLATIONS	R -CH. SL 99-0017	02-16-99	03-15-99
H 94	MICHAUX	SUPERIOR COURT DIVISION ELECTIONS	H -RE-REF COM ON JUDICII	02-17-99	03-03-99
H 114=	HIATT	GUARD. AD LITEM/ATTYS	*H -RE-ASSIGNED TO APP-JPS	02-22-99	04-20-99
H 146=	CULPEPPER	UNIFORM PRUDENT INVESTOR ACT	H -REF TO COM ON JUDICIV	02-25-99	
H 162=	CULPEPPER	1999 TECHNICAL CORRECTIONS	*H -RATIFIED	02-25-99	04-23-99
H 200=	CULPEPPER	SLAYER/FORFEITURE OF PROP. RIGHTS	*H -RE-REF COM ON RULES	03-02-99	03-15-99
H 201=	CULPEPPER	APPOINTMENT OF SUCCESSOR TRUSTEES	R -CH. SL 99-0118	03-02-99	03-11-99
H 202=	CULPEPPER	AMEND PROFESSIONAL CORP. ACT	*H -RATIFIED	03-02-99	03-22-99
H 226=	CULPEPPER	FORECLOSURE NOTICE	*R -CH. SL 99-0137	03-03-99	03-22-99
H 261=	CULPEPPER	LETTERS OF CREDIT UCC REWRITE	H -REF TO COM ON JUDICIV	03-04-99	
H 263=	CULPEPPER	UNCLAIMED PROPERTY ACT	H -REF TO COM ON JUDICIV	03-04-99	
H 272	THOMAS	CHILD CUSTODY VIOLATION/MISDEMEANOR	H -REF TO COM ON JUDICIV	03-04-99	
H 290	BADDOUR	AMEND CRIME VICTIMS COMP. ACT	R -CH. SL 99-0269	03-04-99	03-25-99
H 300=	CULPEPPER	APPEAL OR TRANSFER FROM CLERK	H -REF TO COM ON JUDICIV	03-04-99	
H 302=	CULPEPPER	ENHANCE CHILD SUPPORT ENFORCEMENT	*R -CH. SL 99-0293	03-04-99	04-22-99
H 303=	SAUNDERS	COMMERCIAL VEHICLE SAFETY	*H -RATIFIED	03-04-99	04-07-99
H 304=	EARLE	CHILD CARE SUBSIDY FRAUD	R -CH. SL 99-0279	04-05-99	04-12-99
H 331=	BOWIE	SENTENCING SERVICES PROGRAM	*R -CH. SL 99-0306	03-04-99	03-23-99
H 409	SAUNDERS	TRAFFIC CAMERAS OK'D STATEWIDE	HF-FAILED 2ND READING	03-29-99	04-14-99
H 426	JARRELL	LOCAL RED LIGHT CAMERAS	*R -CH. SL 99-0181	03-29-99	04-08-99
H 477=	JEFFUS	COMMUNITY COLLEGE CAMPUS POLICE	R -CH. SL 99-0068	04-07-99	04-13-99
H 514=	SAUNDERS	LOCAL PHOTO ENFORCEMENT	*R -CH. SL 99-0182	03-22-99	04-08-99
H 572	EDWARDS	GREENVILLE RED LIGHT CAMERAS	H -RE-REF COM ON JUDICIV	03-24-99	04-08-99
H 572	EDWARDS	GREENVILLE RED LIGHT CAMERAS	H -RE-REF COM ON JUDICIV	04-12-99	
H 604	THOMAS	CLARIFY ATTY-IN-FACT GIFTS	H -PRES. TO GOV. 07-15	03-25-99	04-08-99
H 628=	ALEXANDER	CHARLOTTE SCHOOL ZONE SPEED CAMERAS	H -REF TO COM ON JUDICIV	03-29-99	
H 786	HAIRE	COMMERCIAL FELONY DEATH BY VEHICLE	*HF-FAILED 2ND READING	04-01-99	04-23-99
H 979	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	*S -REF TO COM ON JUDICII	04-12-99	04-20-99

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 IV Valid Through 22-JUL-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 980=	BADDOUR	WORKERS' COMP./THIRD PARTY ACTIONS	*R -CH. SL 99-0194	04-12-99	04-20-99
H1033	CULPEPPER	APPELLATE JUDGE ELECTIONS	H -REF TO COM ON JUDICIV	04-14-99	
H1082	SAUNDERS	LICENSING SELLING OF CARS	*S -HELD AS FILED	04-15-99	05-13-99
H1100	HAIRE	REMOVAL/RESIGNATION OF TRUSTEES	*S -REF TO COM ON JUDICII	04-15-99	04-20-99
H1204	CULPEPPER	RESTORE DL AFTER FOREIGN JUDGEMENTS	*S -REF TO COM ON JUDICI	04-15-99	04-27-99
H1207	CULPEPPER	ELIGIBILITY FOR STATE HEALTH BENEFIT	H -RE-REF COM ON RULES	04-15-99	04-27-99
H1216	BADDOUR	JUVENILE JUSTICE TECHNICAL CORRECTIO	*H -PRES. TO GOV. 07-13	04-15-99	04-20-99
H1219	BADDOUR	PRETRIAL RELEASE & BOND	H -REF TO COM ON JUDICIV	04-15-99	
H1221	BADDOUR	DA DISCRETION/CAPITAL CASE	H -REF TO COM ON JUDICIV	04-15-99	
H1222=	BADDOUR	STATE JUDICIAL COUNCIL/FUNDS	*H -PRES. TO GOV. 07-15	04-15-99	05-26-99
H1223=	**BADDOUR**	**SUPREME COURT RULE MAKING/FUNDS**	**H -REF TO COM ON JUDICIV**	**04-15-99**	
H1224=	BADDOUR	EXPAND MAGISTRATES' AUTHORITY	*H -RE-REF COM ON JUDICIV	04-15-99	04-26-99
H1224=	BADDOUR	EXPAND MAGISTRATES' AUTHORITY	*H -RE-REF COM ON JUDICIV	04-28-99	
H1225=	**BADDOUR**	**REORG. SUP. CT. DIVISIONS/PILOT FUND**	**H -REF TO COM ON JUDICIV**	**04-15-99**	
H1263	THOMAS	RECOG. FEDERALLY ISSUED LICENSES	R -CH. SL 99-0276	04-15-99	04-22-99
H1285=	BRASWELL	PROHIBIT PREDATORY LENDING	H -RE-REF COM ON JUDICIV	06-29-99	
S 12	ODOM	JUDICIAL APPT./VOTER RETENTION	*HF-FAILED 2ND READING	05-03-99	06-22-99
S 25=	WELLONS	GUARDIAN AD LITEM/ATTYS	S -PRES. TO GOV. 07-20	07-05-99	07-08-99
S 57=	COOPER	LOSE CONTROL LOSE YOUR LICENSE	R -CH. SL 99-0243	03-02-99	06-21-99
S 128=	HARTSELL	INTEREST ON MONEY JUDGMENTS	*S -PRES. TO GOV. 07-14	04-05-99	05-06-99
S 176=	HARTSELL	SLAYER/FORFEITURE OF PROP. RIGHTS	R -CH. SL 99-0176	04-22-99	06-30-99
S 178=	HARTSELL	UNIFORM PRUDENT INVESTOR ACT	*R -CH. SL 99-0215	04-05-99	05-17-99
S 245=	HARTSELL	LETTERS OF CREDIT UCC REWRITE	*R -CH. SL 99-0073	04-22-99	05-04-99
S 246=	HARTSELL	APPEAL OR TRANSFER FROM CLERK	*R -CH. SL 99-0216	04-22-99	05-13-99
S 272	ODOM	LOCAL PHOTO ENFORCEMENT	H -RE-REF COM ON FINANCE	04-01-99	05-18-99
S 292	BALLANCE	SUP. CT. CRIM. CASE DOCKETING PLAN	S -PRES. TO GOV. 07-15	05-03-99	06-29-99
S 329	HAGAN	NEW LAPSE STATUTE	*R -CH. SL 99-0145	04-05-99	05-13-99
S 398	SHAW R	GREENSBORO RED LIGHT CAMERAS	*H -REF TO COM ON JUDICIV	04-14-99	
S 526	HAGAN	MOD. AND TERM. OF IRREVOCABLE TRUSTS	*R -CH. SL 99-0266	04-23-99	06-14-99
S 563=	DANNELLY	CHARLOTTE SCHOOL ZONE SPEED CAMERAS	*H -REF TO COM ON JUDICIV	04-15-99	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY IV Valid Through 22-JUL-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 690	DALTON	DISTRICT COURT ELECTIONS NONPARTISAN	H -RE-REF COM ON RULES	04-15-99	06-30-99
S 800	RAND	EN BANC PROCEDURE	H -RE-REF COM ON RULES	04-28-99	06-08-99
S 871	REEVES	DECEDENTS' ESTATES/FUNERAL EXPENSES	*R -CH. SL 99-0166	04-23-99	05-18-99
S 974	SOLES	VACATION RENTAL ACT	*S -PRES. TO GOV. 07-14	04-28-99	06-30-99
S1005	HOYLE	YEAR 2000 LIABILITY LIMITATIONS	*R -CH. SL 99-0295	04-29-99	06-16-99
S1025=	**CLODFELTER**	**REORG. SUP. CT. DIVISIONS/PILOT FUND**	***S -RATIFIED**	**07-05-99**	**07-08-99**
S1026=	**CLODFELTER**	**SUPREME COURT RULES MAKING/FUNDS**	***H -REF TO COM ON JUDICIV**	**07-06-99**	
S1055	WELLONS	CERTAIN COURT REPORT SERVICES	*R -CH. SL 99-0264	04-29-99	06-14-99
S1149=	COOPER	PROHIBIT PREDATORY LENDING	S -PRES. TO GOV. 07-15	06-30-99	07-06-99

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ATTENDANCE

House Judiciary IV

1999 (Name of Committee)

DATES	2/16	2/18	2/23	3/4	3/11	3/18	3/23	3/25	4/1	4/6	4/8	4/13	4/14	4/15	4/20 7:30
Baddour, Phil – Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Haire, Phil – Vice Chairman	✓	✓	✓	✓	✓	✓	–	✓	✓	✓	✓	✓	✓		✓
Thomas, Scott – Vice Chairman	✓	✓	✓	–	–	✓	✓	✓	✓	✓	✓	✓	–	✓	✓
Bowie, Joni	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	A	✓	✓
Culpepper, Bill	–	–	✓		✓	✓	–	✓	✓	A	✓	A	A		✓
Decker, Michael	✓	✓	–	✓	✓	✓	✓	A	✓	✓	A	A	A	✓	
Earle, Beverly	✓	✓	–	✓	✓	–	–	A	A	✓	✓	✓	A	✓	
Jeffus, Maggie	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	A	✓	✓
Justus, Larry	✓	✓	✓	✓	✓	✓	SICK –	A	A	A	A	✓	–	✓	✓
McMahan, Ed	✓	✓	✓	✓	✓	–	✓	A	✓	A	✓	✓	✓	✓	✓
Mosley, Jane	✓	–	✓	-	–	–	–	A	A	✓	✓	✓	A		✓
Neely, Chuck (RESIGNED 4/1/99)	✓		✓	-	–	✓	✓	A	✓	A	A				
Saunders, Drew	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Tallent, Tim	–	–	-	–	–	–	–	A	A	A	A	A	A	✓	
Cunningham, Pete	–	-	✓	-	-	✓	–	–	–	—	-	–	-		
Pope, Art (REPLACED NEELY 4/15/99)															✓

ATTENDANCE

House Judiciary IV

(Name of Committee)

1999

DATES	4/20 10:00	4/21 7:30	4/21 1:00	4/22	4/22 10am	4/23 pm	5/4	5/6	5/11	5/13	5/18	5/20	5/25	6/8	6/10
Baddour, Phil – Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Haire, Phil – Vice Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Thomas, Scott – Vice Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓
Bowie, Joni	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Culpepper, Bill	✓	✓	–	✓	✓	A			✓		✓	✓	✓		✓
Decker, Michael	✓	A	✓	A	✓	A	✓		✓	✓	✓		✓	✓	✓
Earle, Beverly	A	✓	A	A	✓	A			✓				✓		
Jeffus, Maggie	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Justus, Larry	✓	✓	✓	✓	✓	A	✓	✓	✓	✓	✓	✓	✓	✓	✓
McMahan, Ed	✓	✓	✓	✓	✓	✓			✓		✓	✓	✓		✓
Mosley, Jane	✓	sick –	A	✓	A	A	✓		✓			✓			
Pope, Art	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓
Saunders, Drew	✓	✓	✓	✓	✓	A	✓	✓	✓		✓	✓	✓	✓	✓
Tallent, Tim	A	A	A	A	A	A									
Cunningham, Pete	–	–	–	–	–	✓									

ATTENDANCE

House Judiciary IV

(Name of Committee)

DATES	6/15	6/17	6/22	6/29 7:30	6/29 10	7/1	7/6 10	7/6 1	7/8
Baddour, Phil – Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓
Haire, Phil – Vice Chairman	✓		✓	✓	✓	✓	✓	✓	✓
Thomas, Scott – Vice Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓
Bowie, Joni		✓	✓	✓	✓	✓	✓		✓
Culpepper, Bill	✓		✓	✓	✓	✓	✓	✓	✓
Decker, Michael		✓	✓		✓	✓			
Earle, Beverly		✓				✓	✓	✓	
Jeffus, Maggie	✓	✓	✓	✓	✓	✓	✓	✓	✓
Justus, Larry	✓	✓	✓	✓	✓	✓	✓	✓	✓
McMahan, Ed	✓		✓			✓	✓	✓	✓
Mosley, Jane		✓	✓						
Pope, Art	✓	✓	✓	✓	✓	✓	✓	✓	✓
Saunders, Drew		✓	✓	✓	✓	✓	✓	✓	✓
Tallent, Tim			✓	✓	✓	✓	✓	✓	✓
Cunningham, Pete						✓	✓	✓	
Andy Dedmon		✓					✓		
Joe Hackney								✓	

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

February 16, 1999

The House Committee on Judiciary IV met on Tuesday, February 16, 1999, in Room 1425 of the Legislative Building at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Decker, Earle, Jeffus, Justus, McMahan, Mosley, Neely, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys were also present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order and explained that this first meeting was an organizational meeting. He introduced the Sergeant-at Arms, Pages, Committee Assistant, Legislative Aide and Dr. Griffin, the "Doctor of the Day." The Chairman then went around the room and asked each member and staff person to tell a little about themselves so they could all get to know each other better.

After a few brief remarks by the Chairman, the meeting was adjourned at 10:40 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

VISITOR REGISTRATION SHEET

Judiary IV — Feb 15, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conference of D.A.s
Lisa Reyes	the insider
Marion Griffin	DOD
Mark Beacom	Capitol Group
Garrett Perdue	ZERS Assoc, PA
Jack Cozort	PPAB
Andy Ellen	NCRMA
Jamo Pegg	NCGA
Jim Q. Barn	NCMS
Lucias Pullen	ATTORNEY
Fran Preston	NCRMA
Dick Z	NCAE
Amy Pellbright	Hunton & Wms

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

February 18, 1999

The House Committee on Judiciary IV met on Thursday, February 18, 1999, in Room 1425 of the Legislative Building at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Decker, Earle, Jeffus, Justus, McMahan, Saunders, and Betty Harrison sat in for Neely. Tim Hovis and Esther Manheimer, Staff Attorneys were also present.

The Chairman called the meeting to order to consider the following bill:

Representative Hurley was recognized to explain **HB 34—Lose Control Lose Your License** and sent forth a proposed committee substitute (PCSRG-001). Rep. Justus moved the adoption of the proposed committee substitute for purpose of discussion. Motion carried. Rep. Hurley proceeded with the explanation of the proposed committee substitute.

A number of people spoke in favor of the bill and no action was taken.

The Chairman announced the next meeting would be on Tuesday, February 23, 1999 at 10:00 a.m. in Room 421 LOB.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Patricia Pleasants
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 34

Short Title: Lose Control Lose Your License. (Public)

Sponsors: Representatives Hurley; Allen, Baddour, Barefoot, Church, Cole, Cox, Dedmon, Fox, Gibson, Goodwin, Hill, Jarrell, McAllister, Melton, Morris, Mosley, Nye, Oldham, Rayfield, Tucker, Warner, C.Wilson, and Yongue.

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

February 4, 1999

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE WHEN CERTAIN PROVISIONAL LICENSEES COMMIT DESIGNATED ACTS.

The General Assembly of North Carolina enacts:

Section 1. Subsection (n) of G.S. 20-11 reads as rewritten:

"(n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent ~~must~~ shall have a driving eligibility certificate. A driving eligibility certificate ~~must~~ shall meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection ~~must~~ shall show that he or she has determined that one of the following requirements is met:

a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.

c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(1a) If the person who desires to obtain a permit or license under this section was either: (i) expelled, (ii) suspended for more than 10

consecutive days, or (iii) assigned to an alternative educational setting for an incident that occurred either after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for (i) the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, (ii) the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or (iii) the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under subdivision (4) of this subsection to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior, in accordance with rules adopted by the State Board of Education under G.S. 115C-12(28), the Secretary of Administration under G.S. 115C-566, or the State Board of Community Colleges under G.S. 115D-5(a3), as applicable.

b. The person was placed in an alternative educational setting and has displayed exemplary student behavior, in accordance with rules adopted by the State Board of Education under G.S. 115C-12(28), the Secretary of Administration under G.S. 115C-566, or the State Board of Community Colleges under G.S. 115D-5(a3), as applicable.

c. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate. The determination as to whether the person successfully completed this program shall be made in accordance with rules adopted by the State Board of Education under G.S. 115C-12(28), the Secretary of Administration under G.S. 115C-566, or the State Board of Community Colleges, as applicable.

d. The person needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling

program, as appropriate, or a mental health treatment program, and no other transportation is available.

(2) It ~~must~~ shall be on a form approved by the Division.

(3) It ~~must~~ shall be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It ~~must~~ shall be signed by the applicable person named below:

a. The principal, or the principal's designee, of the public school in which the person is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.

c. The person who provides the academic instruction in the home school in which the person is enrolled.

d. The designee of the board of directors of the charter school in which the person is enrolled.

e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 2. G.S. 20-13.2 reads as rewritten:

"(c1) The Division ~~must~~ shall revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocations ~~must~~ shall last for the following periods:

(1) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), then the revocation shall last until the person's eighteenth birthday.

(2) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), then the revocation shall be for a period of one year.

~~until the division restores the permit or license under this subsection.~~

~~The~~ For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), the Division ~~must~~ shall restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), the Division shall restore a person's permit or license before the end of the revocation period, if the person submits to the Division a driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 3. G.S. 115C-12(28) reads as rewritten:

"(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall issue ~~rules defining~~ the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish ~~The State Board also shall issue rules for~~ the procedures a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board ~~must~~ shall follow and the requirements that person ~~must~~ shall meet to obtain a driving eligibility certificate.

c. To require the ~~The~~ person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that ~~one of~~ the following requirements ~~is~~ are met:

~~a.~~ 1. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its ~~equivalent.~~

~~b.~~ ~~A~~ equivalent; a substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the ~~certificate.~~

~~c.~~ ~~The~~ certificate; or the person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

2. If the person who desires to obtain a permit or license under G.S. 20-11 was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting, for an incident that occurred after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-

related activity on or off school property, for the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

I. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior.

II. The person was placed in an alternative educational setting and has displayed exemplary student behavior.

III. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

IV. The person needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

e. For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), to provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:

1. Displays exemplary student behavior.
2. Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

f. To define exemplary student behavior. These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles any information necessary to comply with G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is necessary. This form shall be used for students enrolled in public schools, charter schools, or nonpublic schools accredited by the Board."

Section 4. G.S. 115C-566 reads as rewritten:

"**§ 115C-566. Driving eligibility certificates; requirements.**

(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, shall issue rules for the procedures a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education ~~must~~ shall follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The person~~ The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ shall provide the certificate if ~~he or she determines that one of~~ the following requirements ~~is~~ are met:

(1) He or she determines that:

a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its ~~equivalent.~~ equivalent;

~~(2)~~ b. A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the ~~certificate.~~ certificate; or

~~(3)~~ c. The person seeking the certificate cannot make progress toward obtaining a high school diploma or its ~~equivalent.~~ equivalent; and

(2) If the person who desires to obtain a permit or license under G.S. 20-11 was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting, for an incident

that occurred after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, for the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior.

b. The person was placed in an alternative educational setting and has displayed exemplary student behavior.

c. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

d. The person needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

The rules shall define exemplary student behavior and shall provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate.

For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), these rules shall provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:

(1) Displays exemplary student behavior.

(2) Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

(b) The Secretary of Administration shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles any information necessary to comply with G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is necessary. This form shall be used for students enrolled in home schools or nonpublic schools.

(c) In accordance with rules adopted by the Secretary under this section, persons who are required to sign driving eligibility certificates that meet the conditions established in G.S. 20-11 shall obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles and shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 5. G.S. 115C-288 is amended by adding the following new subsection to read:

"(i) To Sign Driving Eligibility Certificates and to Notify the Division of Motor Vehicles. -- In accordance with rules adopted by the State Board of Education, the principal or the principal's designee shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 6. G.S. 115C-238.29F is amended by adding the following new subsection to read:

"(i) Driving Eligibility Certificates. -- In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Shall obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 7. G.S. 115D-5(a3) reads as rewritten:

"(a3) The State Board of Community Colleges shall issue the following rules ~~for~~ to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2;

(1) To establish the procedures a person who is or was enrolled in a community college ~~must~~ shall follow and the requirements that person ~~must~~ shall meet to obtain a driving eligibility certificate. ~~The~~

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that ~~one of~~ the following requirements ~~is~~ are met:

~~(1)~~ a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its ~~equivalent.~~

~~(2)~~ ~~A~~ equivalent; a substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the ~~certificate.~~

~~(3)~~ ~~The~~ certificate; or the person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

b. If the person who desires to obtain a permit or license under G.S. 20-11 was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting, for an incident that occurred after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, for the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

1. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior.
2. The person was placed in an alternative educational setting and has displayed exemplary student behavior.
3. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal

controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

4. The person needs the certificate in order to drive to and from a community college, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

(3) ~~The rules shall~~ To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), to provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:

a. Displays exemplary student behavior.

b. Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

(5) To define exemplary student behavior.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles any information necessary to comply with G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is necessary."

Section 8. Sections 3, 4, and 7 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2000. This act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1998, who held a valid North Carolina learner's permit issued before December 1, 1998, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1998. This act shall only apply to conduct committed on or after the effective date by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H34-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 34
THIS IS A DRAFT 17-FEB-99 11:27:18
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Lose Control Lose Your License. (Public)

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF 18 FOR COMMITTING DESIGNATED ACTS.

The General Assembly of North Carolina enacts:

Section 1. Subsection (n) of G.S. 20-11 reads as rewritten:

"(n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent ~~must~~ shall have a driving eligibility certificate. A driving eligibility certificate ~~must~~ shall meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection ~~must~~ shall show that he or she has determined that one of the following requirements is met:

a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.

c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(1a) If the person who desires to obtain a permit or license under this section was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting for an incident that occurred either after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for (i) the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, (ii) the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or (iii) the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under subdivision (4) of this subsection to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The conduct that led to the disciplinary action occurred before the person reached the age of 15, and the person is now at least 16 years old.

b. The conduct that led to the disciplinary action occurred after the person reached the age of 15, and it is at least one year after the date the person exhausted all administrative appeals connected to the disciplinary action.

c. The person has returned to school following the period of expulsion or suspension and has

displayed exemplary student behavior, in accordance with rules adopted by the State Board of Education under G.S. 115C-12(28), the Secretary of Administration under G.S. 115C-566, or the State Board of Community Colleges under G.S. 115D-5(a3), as applicable.

d. The person was placed in an alternative educational setting and has displayed exemplary student behavior, in accordance with rules adopted by the State Board of Education under G.S. 115C-12(28), the Secretary of Administration under G.S. 115C-566, or the State Board of Community Colleges under G.S. 115D-5(a3), as applicable.

e. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate. The determination as to whether the person successfully completed this program shall be made in accordance with rules adopted by the State Board of Education under G.S. 115C-12(28), the Secretary of Administration under G.S. 115C-566, or the State Board of Community Colleges, as applicable.

f. The person needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

(2) It ~~must~~ shall be on a form approved by the Division.

(3) It ~~must~~ shall be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It ~~must~~ shall be signed by the applicable person named below:

a. The principal, or the principal's designee, of the public school in which the person is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.
c. The person who provides the academic instruction in the home school in which the person is enrolled.
c1. The person who provides the academic instruction in the home in accordance with an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law.
d. The designee of the board of directors of the charter school in which the person is enrolled.
e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 2. G.S. 20-13.2(c1) reads as rewritten:

"(c1) The Division ~~must~~ shall revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocation ~~must~~ shall last for the following periods:

(1) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), then the revocation shall last until the person's eighteenth birthday.
(2) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), then the revocation shall be for a period of one year.

~~until the person's eighteenth birthday or until the Division restores the permit or license under this subsection.~~

~~The~~ For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), the Division ~~must~~ shall restore a person's permit or

license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), the Division shall restore a person's permit or license before the end of the revocation period, if the person submits to the Division a driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 3. G.S. 115C-12(28) reads as rewritten:

"(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall ~~issue rules defining~~ adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish ~~The State Board also shall issue rules for~~ the procedures a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board ~~must~~ shall follow and the requirements that person ~~must~~ shall meet to obtain a driving eligibility certificate.

c. To require the ~~The~~ person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that ~~one of~~ the following requirements ~~is~~ are met:

~~a.~~ 1. The person seeking the certificate is currently enrolled in school and

is making progress toward obtaining a high school diploma or its ~~equivalent.~~

~~b.~~ ~~A~~ equivalent; a substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the ~~certificate.~~

~~c.~~ ~~The~~ certificate; or the person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

2. If the person who desires to obtain a permit or license under G.S. 20-11 was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting, for an incident that occurred after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, for the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

I. The conduct that led to the disciplinary action occurred before

the person reached the age of 15, and the person is now at least 16 years old.

II. The conduct that led to the disciplinary action occurred after the person reached the age of 15, and it is at least one year after the date the person exhausted all administrative appeals connected to the disciplinary action.

III. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior.

IV. The person was placed in an alternative educational setting and has displayed exemplary student behavior.

V. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

VI. The person needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

e. For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-

11(n)(1a), to provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:

1. Displays exemplary student behavior.
2. Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

f. To define exemplary student behavior. These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student is no longer eligible for a driving eligibility certificate needed to comply with G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is necessary. This form shall be used for students enrolled in public schools, charter schools, or nonpublic schools accredited by the Board."

Section 4. G.S. 115C-566 reads as rewritten:

"**§ 115C-566. Driving eligibility certificates; requirements.**

(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, shall ~~issue~~ adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with

the compulsory attendance law, ~~must~~ shall follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The person~~ The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ shall provide the certificate if ~~he or she determines that one of~~ the following requirements ~~is~~ are met:

(1) He or she determines that:

a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its ~~equivalent.~~ equivalent;

~~(2)~~ b. A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the ~~certificate.~~ certificate; or

~~(3)~~ c. The person seeking the certificate cannot make progress toward obtaining a high school diploma or its ~~equivalent.~~ equivalent; and

(2) If the person who desires to obtain a permit or license under G.S. 20-11 was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting, for an incident that occurred after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, for the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The conduct that led to the disciplinary action occurred before the person reached the age of 15, and the person is now at least 16 years old.

b. The conduct that led to the disciplinary action occurred after the person reached the age of 15, and it is at least one year after the date the person exhausted all administrative appeals connected to the disciplinary action.

c. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior.

d. The person was placed in an alternative educational setting and has displayed exemplary student behavior.

e. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

f. The person needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

The rules shall define exemplary student behavior and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate.

For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), these rules shall provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:

(1) Displays exemplary student behavior.

(2) Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

(b) The Secretary of Administration shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student is no longer eligible for a driving eligibility certificate needed to comply with G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is necessary. This form shall be used for students enrolled in home schools or nonpublic schools.

(c) In accordance with rules adopted by the Secretary under this section, persons who are required to sign driving eligibility certificates that meet the conditions established in G.S. 20-11 shall obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles, and shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 5. G.S. 115C-288 is amended by adding the following new subsection to read:

"(k) To Sign Driving Eligibility Certificates and to Notify the Division of Motor Vehicles. -- In accordance with rules adopted by the State Board of Education, the principal or the principal's designee shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 6. G.S. 115C-238.29F is amended by adding the following new subsection to read:

"(j) Driving Eligibility Certificates. -- In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles,

as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 7. G.S. 115D-5(a3) reads as rewritten:

"(a3) The State Board of Community Colleges shall ~~issue~~ adopt the following rules ~~for~~ to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college ~~must~~ shall follow and the requirements that person ~~must~~ shall meet to obtain a driving eligibility certificate. ~~The~~

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that ~~one of~~ the following requirements ~~is~~ are met:

~~(1)~~ a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its ~~equivalent.~~

~~(2)~~ ~~A~~ equivalent; a substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the ~~certificate.~~

~~(3)~~ ~~The~~ certificate; or the person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

b. If the person who desires to obtain a permit or license under G.S. 20-11 was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting, for an incident that occurred after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, for the possession or use of a

weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate shall show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

I. The conduct that led to the disciplinary action occurred before the person reached the age of 15, and the person is now at least 16 years old.

II. The conduct that led to the disciplinary action occurred after the person reached the age of 15, and it is at least one year after the date the person exhausted all administrative appeals connected to the disciplinary action.

III. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior.

IV. The person was placed in an alternative educational setting and has displayed exemplary student behavior.

V. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

VI. The person needs the certificate in order to drive to and from a community college, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

(3) ~~The rules shall~~ To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), to provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:

a. Displays exemplary student behavior.

b. Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

(5) To define exemplary student behavior.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student is no longer eligible for a driving eligibility certificate needed to comply with G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is necessary."

Section 8. Sections 3, 4, and 7 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2000. This act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina driver license issued before December 1, 1997. This act shall only apply to conduct committed on or after the effective date by a

person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

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February 17, 1999

MEMORANDUM

TO: Representative Philip A. Baddour, Jr., Chairman
House Judiciary IV Committee

FROM: Tim Hovis, Esther Manheimer and O. Walker Reagan
Staff Attorneys

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR HOUSE BILL 34 – LOSE CONTROL LOSE YOUR LICENSE** – Representative Hurley

House Bill 34 would amend the law for persons under age 18 obtaining driver license privileges by conditioning their right to drive on not being expelled or suspended from school because of alcohol or drug violations, bringing illegal weapons on school property, or assaulting and seriously injuring a teacher or other school personnel on school property.

Current law provides that anyone between the ages of 15 and 18 who does not have a high school diploma and wants to obtain or keep a limited learner's permit, learner's permit, or provisional drivers license must obtain a driving eligibility certificate showing that the person is attending school and is making satisfactory progress towards obtaining a high school diploma. If the person does not have a high school diploma or its equivalent and is not making progress towards obtaining a high school diploma or its equivalent, the person will not receive a driving eligibility certificate or the person's permit or license will be revoked.

House Bill 34 adds further criteria under which a person would not be issued a driving eligibility certificate or the person's permit or license would be revoked. Under the bill a person would not be eligible to obtain a permit or license if the person was:

- Expelled;
- Suspended for more than 10 consecutive days; or
- Assigned to an alternative educational setting

for one of the following incidents:

- The possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity either on or off school property.
- The possession or use of a gun, rifle, pistol, or other firearm, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive on school property. (This does not include BB guns, stun guns, air rifles, air pistols, or other weapons.)

- The physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property.

The driving eligibility certificate would be revoked for one year, but may be reinstated after six months if the person displays exemplary student behavior or attends and successfully completes a drug or alcohol treatment counseling program.

In addition, a driving eligibility certificate may be issued if the person needs the certificate to drive to and from school, a drug or alcohol treatment counseling program, or mental health treatment program, and no other transportation is available.

The bill applies to public schools, nonpublic schools, charter schools, home schools, and community colleges.

Section 1 amends G.S. 20-11(n) to provide that anyone less than 18 years old desiring to obtain a learners permit or drivers license must obtain a driving eligibility certificate certifying that the person has not been expelled or suspended from school for the enumerated offenses.

Section 2 amends G.S. 20-13.2(c1) (Grounds for revoking a provisional license) to provide that the revocation of permits or licenses for a lose control violation would be for a period of one year. This section also provides that the Division of Motor Vehicles (DMV) must restore a person's permit or license before the end of the revocation period if the person presents a valid driving eligibility certificate.

Section 3 amends G.S. 115C-12(28) (State Board of Education – Duty to develop rules for issuance of driving eligibility certificates) and **Section 4** amends G.S. 115C-566 (Nonpublic Schools – Driving eligibility certificates; requirements) to direct the appropriate agencies to adopt rules to assist public schools, nonpublic schools not accredited by the State Board of Education, and home schools in administering the provisions of G.S. 20-11(n)(1a).

Section 5 amends G.S. 115C-288 (Powers and duties of principals), and **Section 6** amends G.S. 115C-238.29F (Education/Optional programs – General requirements) to require the appropriate school personnel to:

- Sign driving eligibility certificates that meet the criteria under G.S. 20-11.
- Obtain necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose necessary information to DMV.
- Notify DMV when a student who holds a driving eligibility certificate no longer meets its conditions.

Section 7 amends G.S. 115D-5(a3) (Community colleges – administration of institutions) to direct the State Board of Community Colleges to adopt rules to administer G.S. 20-11 and G.S. 20-13.2.

Section 8 provides that rule making agencies may begin adopting rules as soon as the bill becomes law. The remainder of the act is effective July 1, 2000 and applies to anyone who obtained a learners permit or drivers license after December 1, 1997. The act applies only to conduct committed on or after the effective date by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

tive date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

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

Session Laws 1997-443, s. 35.20, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — Session Laws 1997-16, s. 1, effective December 1, 1997, rewrote the section. See editor's note for applicability.

CASE NOTES

Presumption of Control. — Subsection (b) creates a presumption that the statutorily approved person occupying the front passenger seat has the right to control and direct the operation of the vehicle. Stanfield v. Tilghman ex rel. Stanfield, 117 N.C. App. 292, 450 S.E.2d 751 (1994), rev'd on other grounds, 342 N.C. 389, 464 S.E.2d 294 (1995).

While front seat passenger who was a licensed driver was presumed to have "the right to control" the vehicle, this presumption does not translate into an irrebuttable presumption "of control" so as to impute negligence or establish contributory negligence, as a matter of law, without regard for exigent circumstances or general negligence principles. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

Statutorily Approved Person May Recover Damages. — The negligence of a driver, operating an automobile under a valid learner's permit pursuant to subsection (b), is not imputed to the statutorily approved person who occupies the seat next to the permittee and who has the right to control and direct the permittee's operation of the car. Therefore, the statutorily approved person is not precluded from recovering damages for personal injuries sustained as a result of the permittee's sudden negligence. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

If the permittee's negligent operation of a vehicle was imputed, in all instances as a matter of law to the supervising adult, such adults, including driver education instructors, would be less inclined to serve as supervisors over a permittee's practice driving, thus militating against our public policy and practice regarding drivers' education. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

Cited in Monk v. Cowan Transp., Inc., 121 N.C. App. 588, 468 S.E.2d 407 (1996).

§ 20-11. (Effective August 1, 1998) Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

(a) Process. — Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1. — Driving with a limited learner's permit.

(2) Level 2. — Driving with a limited provisional license.

(3) Level 3. — Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

§ 20-11 is set out twice. See notes.

(b) Level 1. — A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.

(2) Passes a written test administered by the Division.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

(c) Level 1 Restrictions. — A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

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

(d) Level 2. — A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

(3) Passes a road test administered by the Division.

(4) Has a driving eligibility certificate or a high school diploma or its equivalent.

(e) Level 2 Restrictions. — A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

§ 20-11 is set out twice. See notes.

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

(f) Level 3. — A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. — The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following upon the submission of a driving eligibility certificate or a high school diploma or its equivalent:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be

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§ 20-11 is set out twice. See notes.

a motor vehicle moving violation or seat belt infraction if committed in this State.

(i) Application. — An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be the applicant's parent or guardian if the parent or guardian resides in this State and is qualified to be a supervising driver. In all other circumstances, that person must be an adult approved by the Division.

(j) Duration and Fee. — A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ten dollars ($10.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. — A supervising driver must be a parent or guardian of the permit holder or license holder if a parent or guardian signed the application for the permit or license. If a parent or guardian did not sign the application, the supervising driver must be the adult who signed the application. A supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(l) Violations. — It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176.

(m) Insurance Status. — The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(n) Driving Eligibility Certificate. — A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:
   a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
   b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.
   c. The person cannot make progress toward obtaining a high school diploma or its equivalent.
(2) It must be on a form approved by the Division.
(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

§ 20-11 is set out twice. See notes.

(4) It must be signed by the applicable person named below:
a. The principal, or the principal's designee, of the public school in which the person is enrolled.
b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.
c. The person who provides the academic instruction in the home school in which the person is enrolled.
d. The designee of the board of directors of the charter school in which the person is enrolled.
e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter. (1997-507, s. 1.)

Section Set Out Twice. — The section above is effective August 1, 1998. For the section as in effect until August 1, 1998, see the preceding section, also numbered § 20-11.

Editor's Note. — Session Laws 1997-507, s. 6, effective September 17, 1997, provides that the State Board of Education shall initiate and coordinate meetings in order to develop coordinated rules, policies, and guidelines needed to implement the act.

Session Laws 1997-507, s. 7, effective September 7, 1997, provides the State Board of Education shall study the effectiveness of this act on the dropout rates and progress toward graduation of students under the age of 18 and shall report the results of this study to the Joint Legislative Education Oversight Committee and the Fiscal Division by November 15, 2002.

Session Laws 1997-507, s. 8, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Session Laws 1997-507, s. 9, effective September 17, 1997, is a severability clause.

Effect of Amendments. — Session Laws 1997-507, s. 1, effective August 1, 1998 and not applicable to any person who holds a valid North Carolina limited learner's permit issued before December 1, 1997, who holds a valid North Carolina learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a valid North Carolina drivers license issued before December 1, 1997, added subdivisions (b)(3), (d)(4), and (f)(3), added "upon the submission of a driving eligibility certificate or a high school diploma or its equivalent" at the end of the introductory language of subsection (h), and added subsection (n).

§ 20-12: Repealed by Session Laws 1997-16, s. 6, effective December 1, 1997.

Editor's Note. — Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

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

Session Laws 1997-443, s. [illegible] provides: "Except for statutory [illegible] other provisions that clearly [illegible] intention to have effects [illegible]

§ 20-12.1. Impaire

(a) It is unlawful for [illegible] under G.S. 20-7(l) or G.S. [illegible] G.S. 20-7(m) in any of t[illegible]
(1) While under the[illegible]
(2) After having c[illegible] relevant time a[illegible] 0.08 or more.

(b) An offense under [illegible] under G.S. 20-16.2. (197[illegible] 66; 1983, c. 435, s. 9; 19[illegible]

Editor's Note. —
Session Laws 1997-16, s. 1 [illegible] that this act does not appropr[illegible] to the Division to implement t[illegible] does it obligate the General A[illegible] appropriate funds to impleme[illegible]
Session Laws 1997-16, [illegible] amended by Session Laws 19[illegible] 32.20, provides in part that [illegible] through 7 do not apply to any [illegible] holds a valid North Caroli[illegible] learner's permit issued befor[illegible] tive date of act, who holds a [illegible] Carolina learner's permit iss[illegible] the effective date of this act, [illegible] provisional licensee and hol[illegible] North Carolina drivers lic[illegible] before the effective date of t[illegible]

§ 20-13.2. Ground[illegible] cense.

(a) The Division mus[illegible] violating the provisions [illegible] the licensee's conviction[illegible]
(b) If a person is c[illegible] driving and the offense [illegible] license must be revoke[illegible] revocation required or [illegible]
(c) If a person willfu[illegible] pursuant to G.S. 20-1[illegible] license must be revoke[illegible] revocation required or a[illegible] under authority of thi[illegible] time as a revocation or[illegible] willful refusal.
(c1) **(Effective Aug[illegible]** permit or license of a p[illegible] authority notifies the D[illegible]

provements Appropriations Act of 1997".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

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

§ 20-12.1. Impaired supervision or instruction.

(a) It is unlawful for a person to serve as a supervising driver under G.S. 20-7(l) or G.S. 20-11 or as an approved instructor under G.S. 20-7(m) in any of the following circumstances:

(1) While under the influence of an impairing substance.

(2) After having consumed sufficient alcohol to have, at any relevant time after the driving, an alcohol concentration of 0.08 or more.

(b) An offense under this section is an implied-consent offense under G.S. 20-16.2. (1977, c. 116, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 9; 1993, c. 285, s. 2; 1997-16, s. 7.)

Editor's Note. —

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

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

Session Laws 1997-443, s. 35.20, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, rewrote the section. See editor's note for applicability.

§ 20-13.2. Grounds for revoking provisional license.

(a) The Division must revoke the license of a person convicted of violating the provisions of G.S. 20-138.3 upon receipt of a record of the licensee's conviction.

(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is less than 21 years old, his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S. 20-16.2 while he is less than 21 years old, his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

(c1) **(Effective August 1, 1998)** The Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the

§ 20-13.2(c1) has a delayed effective date. See notes.

requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocation must last until the person's eighteenth birthday or until the Division restores the permit or license under this subsection. The Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter.

(d) The length of revocation under this section shall be one year. Revocations under this section run concurrently with any other revocations.

(e) 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.

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Editor's Note. —
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§ 20-14. Duplicate

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1996), c. 675, s.

Effect of Amendments. —
(Reg. Sess., 1996) amendme

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. (1983, c. 435, s. 33; 1987, c. 869, s. 12; 1989, c. 436, s. 3; 1993, c. 285, s. 8; 1995, c. 506, ss. 3, 4, 5; 1997-507, s. 2.)

Editor's Note. — Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1995, c. 506, ss. 3, 4, 5, which amended this section, were effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date.

Session Laws 1997-507, s. 5, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Session Laws 1997-507, s. 9, effective September 17, 1997, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 1, 1998 and not applicable to any person who holds a valid North Carolina limited learner's permit issued before December 1, 1997, who holds a valid North Carolina learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a valid North Carolina drivers license issued before December 1, 1997, added subsection (c1).

§ 20-14. Duplicate licenses.

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.

(2) It is necessary to change the name or address on the license.

(3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.

(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired. (1935, c. 52, s. 9; 1943, c. 649, s. 2; 1969, c. 783, s. 2; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1981, c. 690, s. 11; 1983, c. 443, s. 3; 1991, c. 682, s. 2; c. 689, s. 327; 1991 (Reg. Sess., 1992), c. 1007, s. 28; 1995 (Reg. Sess., 1996), c. 675, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added "or a different color border" to the end of subdivision (3).

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

(g) If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325. (1993, c. 210, s. 6; 1993 (Reg. Sess., 1994), c. 677, s. 16(a); 1995, c. 369, s. 1.)

Editor's Note. — Session Laws 1993, c. 210, s. 6 enacted this section, and s. 7, provided: "This act becomes effective July 1, 1993." As amended by Session Laws 1993 (Reg. Sess., 1994), c. 677, s. 16(a), effective July 5, 1994, c. 210, s. 7 now provides: "This act becomes effective July 1, 1993, except that Sections 3, 5, and 6 become effective July 1, 1995."

Section 16(b) of Session Laws 1993 (Reg. Sess., 1994), c. 677 provides that s. 16 does not apply to employment contracts entered into between a local school unit and an assistant principal between July 1, 1993, and the effective date of the act.

§ 115C-288. Powers and duties of principal.

(a) To Grade and Classify Pupils. — The principal shall have authority to grade and classify pupils except a principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available.

(b) To Make Accurate Reports to the Superintendent and to the Local Board. — The principal shall make all reports to the superintendent. Every principal of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any principal or supervisor who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(c) To Improve Instruction and Community Spirit. — The principal shall give suggestions to teachers for the improvement of instruction.

(d) To Conduct Fire Drills and Inspect for Fire Hazards. — It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire

drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage areas, as well as all classrooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file two copies of a written report once each month during the regular school session with the superintendent of his local school administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the local board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education.

It shall be the duty of the principal to minimize fire hazards pursuant to the provisions of G.S. 115C-525.

(e) To Discipline Students and to Assign Duties to Teachers with Regard to the Discipline, General Well-being, and Medical Care of Students. — The principal shall have authority to exercise discipline over the pupils of the school pursuant to policies adopted by the local board of education as prescribed by G.S. 115C-391(a). The principal shall use reasonable force to discipline students and shall assign duties to teachers with regard to the general well-being and the medical care of students pursuant to the provisions of G.S. 115C-307 and 115C-390. The principal also may suspend or dismiss pupils pursuant to the provisions of G.S. 115C-391.

(f) To Protect School Property. — The principal shall protect school property as provided in G.S. 115C-523.

(g) To Report Certain Acts to Law Enforcement. — When the principal has personal knowledge or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency. Failure to report under this subsection is a Class 3 misdemeanor. For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal. It is the intent of the General Assembly that the principal notify the superintendent and the superintendent notify the local board of any report made to law enforcement under this subsection.

(h) To Make Available School Budgets and School Improvement Plans. — The principal shall maintain a copy of the school's current

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995 (Reg. Sess., 1996), c. 716, s.
18.27; 1997-443, s. 8.29(t).)

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

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

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

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

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 7.1, effective June 21, 1996, added "except a principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test

CASE N

Editor's Note. — *Most of the cases below were decided under corresponding provisions of former Chapter 115.*

Superintendent and Principal as Agents of Board. — By statute and under traditional common-law principles, the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions, based on the recommendations of its agents, by simply refusing to inquire into its agents' reasons. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984), cert. denied, 313 N.C. 506, 329 S.E.2d 389 (1985).

School officials do not possess absolute authority over their students. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Students Possess Fundamental Rights. — Students in school as well as out of school are "persons" under the North Carolina Constitution, possessed of fundamental rights which the State must respect. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

budget and school improvement plan, including any amendments to the plan, and shall allow parents of children in the school and other interested persons to review and obtain such documents in accordance with Chapter 132 of the General Statutes. (1955, c. 1372, art. 17, ss. 6, 8; 1957, c. 843; 1959, c. 573, s. 13; c. 1294; 1965, c. 584, s. 15; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 4; 1987, c. 572, s. 3; 1993, c. 327, s. 1; c. 539, s. 883; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 716, s. 7.1; 1996, 2nd Ex. Sess., c. 18, s. 18.27; 1997-443, s. 8.29(t).)

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Session Laws 1996, Second Extra Session, c. 18, s. 18.27, effective July 1, 1996, added subsection (h).

The 1997 amendment, effective November 1, 1997, substituted "personal knowledge or actual notice from school personnel" for "reasonable belief" in the first sentence of subsection (g), and inserted the second and last sentences of that subsection.

Legal Periodicals. — For note on constitutional restrictions on the infliction of corporal punishment, see 50 N.C.L. Rev. 911 (1972).

CASE NOTES

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But Boards and Officials May Adopt Reasonable Regulations. — Local school boards and school officials have the implied right to adopt appropriate and reasonable rules and regulations for the purpose of carrying out their powers and duties. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

School Dress Code. — A school may adopt a dress code and may exclude a student from participating in certain school programs, including graduation ceremonies, if the student does not comply with the dress code. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

Violation of Dress Code. — Where the principal of a high school established a lawful and valid dress code for eligible graduates participating in the graduation ceremony, and the plaintiffs' son appeared for the graduation ceremony attired in violation of the code, in that he did not wear dress pants as required, but instead wore denim jeans, the defendant

§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. — A charter school shall meet the same health and safety requirements required of a local school administrative unit.

(b) School Nonsectarian. — A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. —

(1) The board of directors of a charter school may sue and be sued. The State Board of Education shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain. The board of directors shall obtain at least the amount of and types of insurance required by these rules to be included in the charter. Any sovereign immunity of the charter school, of the organization that operates the charter school, or its members, officers, or directors, or of the employees of the charter school or the organization that operates the charter school, is waived to the extent of indemnification by insurance.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school.

(d) Instructional Program. —

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its charter.

(e) Employees. —

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine

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through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter school, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave or extension of leave be made up to 45 days before the teacher would otherwise have to report for duty. For subsequent years, the local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The State Board of Education provides funds to charter schools, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school employees and are "teachers" for purposes of membership in the North Carolina Teachers' and State Employees' Retirement System and State Employees' Comprehensive Major Medical Plan. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. —

(1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the

State Board of Education for charter schools. These audit requirements may include the requirements of the School Budget and Fiscal Control Act.

(2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. —

(1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.

(2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.

(3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.

(4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides.

(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

(6) During each period of enrollment, the charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case,

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(7) Notwithstanding any law
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(h) Transportation. — The cha
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A local board may charge the ch
that is sufficient to cover the cost
Furthermore, a local board may
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on buses it intends to operate dur
would not be practically feasible

(i) Assets. — Upon dissolution
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local school administrative unit
located. (1995 (Reg. Sess., 1996
1997-443, s. 8.19; 1997-456, s. 55.

Editor's Note. — Session Laws 1997-
30, s. 13, provides: "The Board of Trust-
ees of the North Carolina Teachers' and
State Employees' retirement System
through the Office of the Attorney Gen-
eral shall request a letter of determina-
tion or ruling from the Internal Revenue
Service, United States Department of
Treasury, as to whether the status of the
North Carolina Teachers' and State Em-
ployees' Retirement System as a govern-
mental plan would be adversely affected
by the participation of employees of char-
ter schools. The request shall be made to
the Internal Revenue Service after it is
approved by the Speaker of the House of
Representatives and the President Pro
Tempore of the Senate or their designees
and no later than 30 days after the
effective date of this act. Employees of
charter schools are eligible for participa-
tion in the North Carolina Teachers' and
State Employees' Retirement System
upon the first day of the calendar month
following the State's receipt of a favor-
able letter of determination or ruling." As

students shall be accepted by lot. Once enrolled, students are not required to reapply in subsequent enrollment periods.

(7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. — The charter school may provide transportation for students enrolled at the school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

(i) Assets. — Upon dissolution of the charter school or upon the nonrenewal of the charter, all net assets of the charter school purchased with public funds shall be deemed the property of the local school administrative unit in which the charter school is located. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 5; 1997-443, s. 8.19; 1997-456, s. 55.4.)

Editor's Note. — Session Laws 1997-430, s. 13, provides: "The Board of Trustees of the North Carolina Teachers' and State Employees' retirement System through the Office of the Attorney General shall request a letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, as to whether the status of the North Carolina Teachers' and State Employees' Retirement System as a governmental plan would be adversely affected by the participation of employees of charter schools. The request shall be made to the Internal Revenue Service after it is approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate or their designees and no later than 30 days after the effective date of this act. Employees of charter schools are eligible for participation in the North Carolina Teachers' and State Employees' Retirement System upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling." As of October 31, 1997, the Revisor of Statutes is informed that no determination has yet been received.

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

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

Effect of Amendments. — Session Laws 1997-430, s. 13, as amended by Session Laws 1997-456, s. 55.4, effective August 22, 1997, inserted "or fees" in subsection (b); rewrote subdivisions (c)(1) and (c)(2); substituted "charter" for "contract with the local board of education" in subdivision (d)(2); substituted "charter" for "contract" in subdivision (d)(5) and made a punctuation change; in subdivision (e)(3) inserted the third sentence and inserted "For subsequent years"; rewrote subdivision (e)(4); in subdivision (g)(4) deleted "except that the provisions of G.S. 115C-366(d) shall apply to a student who wishes to attend a

VISITOR REGISTRATION SHEET

Judiciary IV — 2/18/99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Cathie Ratta	NCPTA
Joan B. Pearce	Wake County Public School System
Dennis Cotten	Office of Juvenile Justice. P.O. Box 1227 Raleigh NC 27602
Julie White	Lt Gov. Office
LARRY DANIEL	DOT-DMV-DRIVER LICENSE
Ruth Sappie	NCDOT
Dee Atkinson	SBE
Thad Daise	NCAE
Hal Miller	NCACCT
Lucius PULLEN	Attorney
Susan Valauri	Nationwide
Chuck Basham	NCCCS
Charles J. Roth Roffy	Fayetteville

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

The House Committee on Judiciary IV met on Tuesday, February 23, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Cunningham, Jeffus, Justus, McMahan, Mosley, Neely and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order and announced we would continue discussion on the proposed committee substitute for **HB 34—Lose Control Lose Your License.** Rep. Thomas moved the adoption of a revised proposed committee substitute (PCSRG-002) for purpose of discussion. The motion carried. The Chairman recognized Mr. Tim Hovis, Staff Attorney, to explain the changes. Throughout the explanation, the committee members expressed concerns and asked questions. The following items were flagged for future discussion: Page 3, Section d. 3. (line 36) and Page 5. Section f. (line 7). Staff was asked to clarify whether or not these provisions would be mandatory for private schools. The answer was--yes it would be, after the 10-day suspension.

After a lengthy discussion, no action was taken on the bill.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H34-PCSRG-002
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 34
THIS IS A DRAFT 22-FEB-99 11:08:51
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Lose Control Lose Your License. (Public)

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF 18 FOR COMMITTING DESIGNATED ACTS.

The General Assembly of North Carolina enacts:

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

"(n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or license issued under this section ~~and who does not~~ must have a high school diploma or its equivalent or must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:

a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.

c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(1a) The person who is required to sign the certificate under subdivision (4) of this subsection also must show that one of the following requirements is met:

a. The person who seeks a permit or license issued under this section is not subject to subsection (n1) of this section.

b. The person who seeks a permit or license issued under this section is subject to subsection (n1) of this section and is eligible for the certificate under that subsection.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It must be signed by the applicable person named below:

a. The principal, or the principal's designee, of the public school in which the person is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.

c. The person who provides the academic instruction in the home school in which the person is enrolled.

c1. The person who provides the academic instruction in the home in accordance with an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law.

d. The designee of the board of directors of the charter school in which the person is enrolled.

e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), ~~G.S.~~ 115D-5(a3), or ~~G.S.~~ 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 2. G.S. 20-11 is amended by adding the following new subsection to read:

"(n1) Lose Control; Lose License.

(1) The following definitions apply in this subsection:

a. Applicable State entity. -- The State Board of Education for public schools and charter schools, the State Board of Community Colleges for community colleges, or the Secretary of Administration for nonpublic schools and home schools.

b. Certificate. -- A driving eligibility certificate that meets the conditions of subsection (n) of this section.

c. Disciplinary action. -- An expulsion, a suspension for more than 10 consecutive days, or an assignment to an alternative educational setting.

d. Enumerated student conduct. -- One of the following behaviors that results in disciplinary action:

1. The possession or sale of alcohol 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. The physical assault on a teacher or other school personnel on school property.

e. School. -- A public school, charter school, community college, nonpublic school, or home school.

f. School administrator. -- The person who is required to sign certificates under

subdivision (4) of subsection (n) of this section.

g. School property. -- The physical premises of the school, buses or other vehicles used to transport students to the school, and school-sponsored or school-related activities that occur on or off the physical premises of the school.

h. Student. -- A person who desires to obtain a permit or license issued under this section.

(2) Any student who was subject to disciplinary action for enumerated student conduct that occurred either after the first day of July before the school year in which the student enrolled in the eighth grade or after the student's fourteenth birthday, whichever event occurred first, is subject to this subsection.

(3) A student who is subject to this subsection is eligible for a certificate when the school administrator determines that the student has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The enumerated student conduct occurred before the student reached the age of 15, and the student is now at least 16 years old.

b. The enumerated student conduct occurred after the student reached the age of 15, and it is at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action.

c. The student has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior, in accordance with rules adopted by the applicable State entity.

d. The student was placed in an alternative educational setting and has displayed exemplary student behavior, in accordance with rules adopted by the applicable State entity.

e. The disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property, and the student subsequently attended and successfully

completed a drug or alcohol treatment counseling program, as appropriate. The determination as to whether the student successfully completed this program shall be made in accordance with rules adopted by the applicable State entity.

f. The student needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

(4) A student whose permit or license is denied or revoked due to ineligibility for a certificate under this subsection may otherwise be eligible for a certificate if, after six months from the date of the ineligibility, the school administrator determines that one of the following conditions is met:

a. The student has returned to school and has displayed exemplary student behavior, as defined by the applicable State entity.

b. The disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property and the student subsequently attended and successfully completed,as defined by the applicable State entity, a drug or alcohol treatment counseling program, as appropriate."

Section 3. G.S. 20-13.2(c1) reads as rewritten:

"(c1) ~~The Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocations must last until the person's eighteenth birthday or until the division restores the permit or license under this subsection.~~

~~The~~ Upon receipt of notification from the proper school authority that a person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n), the Division must expeditiously notify the person that his or her permit or license is revoked effective on the tenth calendar day after the

mailing of the revocation order. The Division must revoke the permit or license of that person on the tenth calendar day after the mailing of the revocation order. Notwithstanding subsection (d) of this section, the length of revocation must last for the following periods:

(1) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), then the revocation shall last until the person's eighteenth birthday.

(2) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n1), then the revocation shall be for a period of one year.

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), the Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n1), the Division shall restore a person's permit or license before the end of the revocation period, if the person submits to the Division a driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), ~~G.S.~~ 115D-5(a3), or ~~G.S.~~ 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 4. G.S. 20-9 is amended by adding the following new subsection to read:

"(b1) The Division shall not issue a drivers license to any person whose permit or license has been suspended or revoked under G.S. 20-13.2(c1) during the suspension or revocation period, unless the Division has restored the person's permit or license under G.S. 20-13.2(c1)."

Section 5. G.S. 115C-12(28) reads as rewritten:

"(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall ~~issue rules defining~~ adopt

the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish ~~The State Board also shall issue rules for~~ the procedures a person who is or was enrolled in a public ~~school, in a~~ school or in a charter ~~school, or in a nonpublic school accredited by the Board~~ school must follow and the requirements that person ~~must~~ shall meet to obtain a driving eligibility certificate.

c. To require the ~~The~~ person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that one of the following requirements is met:

~~a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~b. A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~c. The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~

1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied

a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public ~~school, in a charter school, or in a nonpublic school accredited by the Board~~ school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools."

Section 6. G.S. 115C-566 reads as rewritten:

"**§ 115C-566. Driving eligibility certificates; requirements.**

(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, shall ~~issue~~ adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The person~~ The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving

eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is ~~currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~ eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

(2) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate.

(b) The Secretary of Administration shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in home schools or nonpublic schools.

(c) In accordance with rules adopted by the Secretary under this section, persons who are required to sign driving eligibility certificates that meet the conditions established in G.S. 20-11 shall obtain the necessary written, irrevocable

consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles, and shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets the conditions under G.S. 20-11(n)(1) or G.S. 20-11(n1)."

Section 7. G.S. 115C-288 is amended by adding the following new subsection to read:

"(k) To Sign Driving Eligibility Certificates and to Notify the Division of Motor Vehicles. -- In accordance with rules adopted by the State Board of Education, the principal or the principal's designee shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 8. G.S. 115C-238.29F is amended by adding the following new subsection to read:

"(j) Driving Eligibility Certificates. -- In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 9. G.S. 115D-5(a3) reads as rewritten:

"(a3) The State Board of Community Colleges shall ~~issue~~ adopt the following rules ~~for~~ to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The~~

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that one of the following requirements is met:

~~(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) ~~The rules shall~~ To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the

event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent."

Section 10. The State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act.

Section 11. Sections 5, 6, 9, and 10 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2000. This act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1997. This act shall apply only to conduct committed on or after July 1, 2000, by a perso who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

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February 18, 1999

MEMORANDUM

TO: Representative Philip A. Baddour, Jr., Chairman
House Judiciary IV Committee

FROM: Tim Hovis, Esther Manheimer and O. Walker Reagan
Staff Attorneys

RE: **REVISED PROPOSED COMMITTEE SUBSTITUTE FOR HOUSE BILL 34 – LOSE CONTROL LOSE YOUR LICENSE** – Representative Hurley

House Bill 34 would amend the law for persons under age 18 obtaining driver license privileges by conditioning their right to drive on not being expelled or suspended from school because of alcohol or drug violations, bringing illegal weapons on school property, or assaulting a teacher or other school personnel on school property.

Current law provides that anyone between the ages of 15 and 18 who does not have a high school diploma and wants to obtain or keep a limited learner's permit, learner's permit, or provisional drivers license must obtain a driving eligibility certificate showing that the person is attending school and is making satisfactory progress towards obtaining a high school diploma. If the person does not have a high school diploma or its equivalent and is not making progress towards obtaining a high school diploma or its equivalent, the person will not receive a driving eligibility certificate or the person's permit or license will be revoked.

House Bill 34 adds further criteria under which a person would not be issued a driving eligibility certificate or the person's permit or license would be revoked. Under the bill a person would not be eligible to obtain a permit or license if the person was:

- Expelled;
- Suspended for more than 10 consecutive days; or
- Assigned to an alternative educational setting

for one of the following incidents:

- The possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity either on or off school property.
- The possession or use of a gun, rifle, pistol, or other firearm, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive on school property. (This does not include BB guns, stun guns, air rifles, air pistols, or other weapons.)
- The physical assault on a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property.

The driving eligibility certificate would be revoked for one year, but may be reinstated after six months if the person displays exemplary student behavior or attends and successfully completes a drug or alcohol treatment counseling program.

In addition, a driving eligibility certificate may be issued if the person needs the certificate to drive to and from school, a drug or alcohol treatment counseling program, or mental health treatment program, and no other transportation is available.

The bill applies to public schools, nonpublic schools, charter schools, home schools, and community colleges.

Sections 1 amend G.S. 20-11 to provide that anyone less than 18 years old desiring to obtain a learners permit or drivers license must obtain a driving eligibility certificate certifying that the person has not been expelled or suspended from school for the enumerated offenses set forth in G.S. 20-11(n1), or if so, the person is again eligible for a driving certificate.

Section 2 creates a new subsection to G.S. 20-11 to enumerate the lose control offenses for losing driving eligibility and the basis for when eligibility is restored.

Section 3 amends G.S. 20-13.2(c1) (Grounds for revoking a provisional license) and Section 4 amends G.S. 20-9 (What persons shall not be licensed) to provide that the revocation of permits or licenses for a lose control violation would be for a period of one year. This section also provides that the Division of Motor Vehicles (DMV) must restore a person's permit or license before the end of the revocation period if the person presents a valid driving eligibility certificate and must not issue a drivers license to any person whose permit or license was revoked. Section 3 also clarifies that the license revocation is effective the 10th day after notice of revocation is mailed to DMV.

Section 5 amends G.S. 115C-12(28) (State Board of Education – Duty to develop rules for issuance of driving eligibility certificates) and Section 6 amends G.S. 115C-566 (Nonpublic Schools – Driving eligibility certificates; requirements) to direct the applicable State entity to adopt rules to assist public schools, nonpublic schools not accredited by the State Board of Education, and home schools in administering the provisions of G.S. 20-11(n)(1a). These sections limit the information the schools are to provide to DMV.

Section 7 amends G.S. 115C-288 (Powers and duties of principals), and Section 8 amends G.S. 115C-238.29F (Education/Optional programs – General requirements) to require the appropriate school personnel to:

- Sign driving eligibility certificates that meet the criteria under G.S. 20-11.
- Obtain necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose necessary information to DMV.
- Notify DMV when a student who holds a driving eligibility certificate no longer meets its conditions.

Section 9 amends G.S. 115D-5(a3) (Community colleges – administration of institutions) to direct the State Board of Community Colleges to adopt rules to administer G.S. 20-11 and G.S. 20-13.2.

Section 10 directs the State Board of Education to initiate and coordinate meetings with other applicable State entities in order to develop coordinated rules, policies and guidelines.

Section 11 provides that rule making agencies may begin adopting rules as soon as the bill becomes law. The remainder of the act is effective July 1, 2000 and applies to anyone who obtained a learners permit or drivers license after December 1, 1997. The act applies only to conduct committed on or after July 1, 2000 by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

VISITOR REGISTRATION SHEET

Jud # 4 — Name of Committee

2-23-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ann Belcher	SBE
Jeanne Williams	NCCCS
Wayne Horton	DMV-Driver License
Anne Wilson	NCBA
Kim Nilsen	Fayetteville Observer-Times
Ginger Gray	Media General News Service
Scott Mooney	AP
Doug Rogers	NCDOT
Nancy Thompson	NCCBD
Julie Wilson	Lt Gov.
Larry Dix	Office of Treasurer Tasker
Leanne Winner	NCSBA
Bill Wilson	NCHE
Barry Smith	Freedom Newspapers

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

The House Committee on Judiciary IV met on Thursday, March 4, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Earle, Jeffus, Justus, McMahan, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order to consider the following bill:

HB 50—Fayetteville Traffic Violations. Rep. Hurley, bill sponsor, was asked to explain the bill. After a brief explanation, Rep Saunders moved for a favorable report.

Committee members asked questions and raised concerns regarding protection for the cities to be able to take out their administrative fees. The Chairman decided not to take a vote until these concerns are addressed.

The meeting adjourned at 10:25 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 50

Short Title: Fayetteville Traffic Violations. (Local)

Sponsors: Representatives Hurley, Kinney, Warner (Primary Sponsors); McAllister, Morris, and Yongue.

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

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF FAYETTEVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 216 of the 1997 Session Laws reads as rewritten:

"Section 2. This act applies to the ~~City~~ Cities of Charlotte and Fayetteville only."

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

North Carolina General Assembly
Legislative Services Office

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

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

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

March 4, 1999

Memorandum

To: **Representative Philip A. Baddour , Jr., Chairman**
House Judiciary IV Committee

From: Esther Manheimer, Staff Attorney

Re: **House Bill 50 – Fayetteville Traffic Violations** – Representative Hurley

House Bill 50 would allow the City of Fayetteville to adopt a local ordinance to enforce traffic offenses such as running a red light or stop sign through the use of a "traffic control photographic system". A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor that works in conjunction with a traffic control device to automatically produce photographs, video or digital images of vehicles violating these types of statutes or ordinances.

The owner of a vehicle photographed would be responsible for the violation unless they can furnish evidence that, at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 shall be assessed. The citation will be mailed to the owner, with no personal service required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to a civil penalty not to exceed $100. The City must institute a nonjudicial administrative hearing to review objections to citations or penalties issued.

Currently this provision applies only to the City of Charlotte. House Bill 50 applies only to the city of Fayetteville.

This act is effective when it becomes law.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:11 p.m. on the 19th day of June, 1997.

S.B. 741

CHAPTER 216

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"*§ 160A-300.1. Use of traffic control photographic systems.*

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

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

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law on the date it was ratified.

H.B. 103 **CHAPTER 217**

AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3 or any action by the county or State boards of elections, the voting precincts of Avery County shall be the 19 precincts that were in existence on January 1, 1995, provided that Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous with the 19 precincts that were in existence on January 1, 1995.

Section 2. This act shall become effective when Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous

VISITOR REGISTRATION SHEET

Judiciary IV — 3/4/99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kim Nilsen	Fayetteville Observer Times
Ruth Sappie	NCDOT
Doug Rogers	NCDOT
Andy Romanet	NCLM.

AGENDA

House Committee on Judiciary IV
March 11, 1999

(Bills are in your notebook behind "HOUSE BILLS" tab in numerical order)

HB 50—Fayetteville Traffic Violations	Rep. Hurley
HB 201—Appointment of Successor Trustees	Rep. Culpepper
HB 200—Slayer/Forfeiture of Property Rights	Rep. Culpepper

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

The House Committee on Judiciary IV met on Thursday, March 11, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Earle, Jeffus, Justus, McMahan, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys were also present.

The Chairman called the meeting to order and introduced the Pages and Sergeant –at-Arms. He then called for consideration of the following bills:

HB 50—Fayetteville Traffic Violations. Esther Manheimer, Staff Attorney, was called on to explain the bill. She stated all the concerns of Committee members had been investigated and this bill was as tight as it could be and as good as this committee could make it. Dale Talbert of the Attorney General's Office made remarks agreeing with Ms. Manheimer. He stated there were some cases in court now regarding the "cost of collection" issue. Rep. Hurley, bill sponsor, reminded the Committee that the purpose of the bill was for safety and not for generating revenue. Rep. Saunders moved for a favorable report and the motion carried.

HB 201—Appointment of Successor Trustees. Rep. Culpepper, bill sponsor, was asked to explain the bill. He stated that this bill was recommended by the General Statutes Commission and asked Bly Hall of the Department of Justice to further explain the bill. She stated it was simply to update the language in the statutes. Rep. McMahan moved for a favorable report and the motion passed.

HB 200—Slayer/Forfeiture of Property Rights. Rep. Culpepper, bill sponsor, was recognized to explain the bill. He brought forth a proposed committee substitute (PCSRG-001). Rep. Saunders moved for adoption of the proposed committee substitute for the purpose of discussion. Rep. Culpepper explained this bill was an attempt to prevent the children of a slayer from losing or changing their inheritance because of the unlawful act of their parent. He called on Bly Hall of the Department of Justice to further explain. She used a handout and chart to explain the bill (Attachment 1). After discussion and comments by the members, Rep. Justus moved for a favorable report to the committee substitute and unfavorable report as to original bill. Motion carried.

The meeting adjourned at 10:45 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 50 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF FAYETTEVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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

3/11/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 201 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO THE APPOINTMENT OF SUCCESSOR TRUSTEES TO CONFORM TO THE RULES OF CIVIL PROCEDURE AND TO UPDATE STATUTORY LANGUAGE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 201

Short Title: Appointment of Successor Trustees/AB. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE APPOINTMENT OF SUCCESSOR TRUSTEES TO CONFORM TO THE RULES OF CIVIL PROCEDURE AND TO UPDATE STATUTORY LANGUAGE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 36A-25 reads as rewritten:

"**§ 36A-25. Parties; hearing; successor appointed.**

Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the ~~defendants, and the procedure shall be the same as in other special proceedings.~~ defendants. Proceedings under this section are subject to Article 33 of Chapter 1 of the General Statutes. ~~If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have~~ A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the ~~matter, and if~~ matter. If it appears to the ~~court~~ clerk that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be ~~accepted,~~ accepted or if it appears to the ~~court~~ clerk that sufficient reasons exist for allowing the ~~resignation,~~ resignation and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the

exercise of ~~his~~ the clerk's discretion, allow the applicant to ~~resign; and in such case the clerk shall proceed to~~ resign. The clerk shall appoint the successor of the petitioner in the manner provided in this Article."

Section 2. G.S. 36A-33 reads as rewritten:

"**§ 36A-33. Appointment of successors to deceased or incapacitated trustees.**

Upon the death or incapacity of a trustee, a new trustee may be appointed on application by ~~any beneficiary,~~ a beneficiary or other interested ~~persons;~~ person by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is ~~registered, making~~ registered. The petition shall make all necessary parties defendants. ~~The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings.~~ Proceedings under this section are special proceedings subject to Article 33 of Chapter 1 of the General Statutes. ~~If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have~~ A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person ~~so~~ named in the ~~petition, or he may appoint~~ petition or some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated ~~trustee; and the~~ trustee. The clerk shall require the person so appointed to give bond as required in ~~G.S. 36A-31; provided, that where by the terms of the instrument upon~~ G.S. 36A-31. If the instrument under which the deceased or incapacitated trustee claimed, ~~said trustee was not required~~ however, does not require the trustee to give bond and ~~did not give bond and an intent is expressed in the creating instrument~~ expresses an intent that a successor trustee ~~shall~~ serve without bond, or ~~where~~ if the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the decision of the clerk as provided in G.S. 36A-27 and 36A-28.

Nothing in this section shall be construed to limit the authority of the clerk of superior court to appoint a successor trustee to a deceased or incapacitated trustee upon ~~his~~ the clerk's own motion."

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

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: March 5, 1999

RE: House Bill 201 (Appointment of Successor Trustees)

House Bill 201 amends two sections in Chapter 36A, which deals with trusts and trustees, to remove from each section a provision that is arguably unconstitutional and another that is redundant and to update the language in each.

Section 1 amends G.S. 36A-25, which deals with the resignation of a trustee and appointment of a successor. This procedure is done in a special proceeding. G.S. 36A-25 contains a provision that allows trust beneficiaries who live out-of-state to be served by publication ("[i]f any of the defendants be nonresidents, summons may be served by publication..."). Similar blanket authorizations for service by publication have been held unconstitutional for some years now, and constitutional law in this area is reasonably well established. See Mullane v. Central Hanover Bank and Trust Company, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (in a judicial accounting for a common trust fund, a state may provide for notice by publication to beneficiaries who are unknown or whose address is not known, but this provision violates the due process clause as to known beneficiaries whose address is readily ascertainable, regardless of whether the beneficiaries reside in-state or out-of-state). The amendments to this section delete the questionable provision. Service under this section will therefore be according to the Rules of Civil Procedure (found in G.S. 1A-1), because the Rules apply to special proceedings except where the statutes provide otherwise.

Section 1 also deletes a reference to the appointment of a guardian ad litem for minors because this subject matter is already covered in the Rules of Civil Procedure (G.S. 1A-1, Rule 17). The remaining amendments in Section 1 are intended only to update the language.

Section 2 amends G.S. 36A-33, on the appointment of a successor trustee after the death or incapacity of an existing trustee, to make essentially the same changes to this section that Section 1 makes to G.S. 36A-25.

3/11/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 200 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 200

Short Title: Slayer/Forfeiture of Prop. Rights/AB. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31A-4 reads as rewritten:

"**§ 31A-4. Slayer barred from testate or intestate succession and other rights.**

The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

(1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession or by common law or statutory right as surviving spouse of the decedent.

(2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate ~~succession,~~ succession or dies testate as to property which would have passed to the slayer pursuant to the will, such property shall ~~pass to others next in succession in accordance with the applicable provision of the Intestate Succession Act.~~ be distributed under G.S. 31B-3.

~~(3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, such property shall pass as if the decedent had died intestate with respect thereto, unless otherwise disposed of by the will.~~"

Section 2. This act becomes effective October 1, 1999, and applies to the estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H200-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 200
THIS IS A DRAFT 10-MAR-99 17:16:07
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Slayer/Forfeiture of Prop. Rights/AB. (Public)

Sponsors:

Referred to:

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31A-4 reads as rewritten:

"§ 31A-4. Slayer barred from testate or intestate succession and other rights.

The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

(1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession or by common law or statutory right as surviving spouse of the decedent.

(2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate ~~succession, such property shall pass to others next in succession in accordance with the applicable provision of the Intestate Succession Act.~~

succession and the slayer has living issue who would have been entitled to an interest in the property if the slayer had predeceased the decedent, the property shall be distributed to such issue, per stirpes. If the slayer does not have such issue, then the property shall be distributed as though the slayer had predeceased the decedent.

(3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, ~~such property shall pass as if the decedent had died intestate with respect thereto, unless otherwise disposed of by the will.~~ the devolution of such property shall be governed by G.S. 31-42(a) notwithstanding the fact the slayer has not actually died before the decedent."

Section 2. This act becomes effective October 1, 1999, and applies to the estates of decedents dying on or after that date.

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

MEMORANDUM

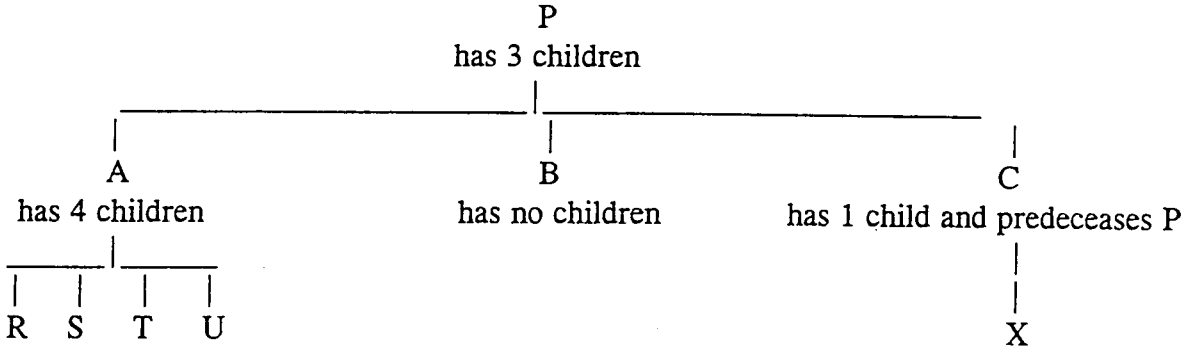
TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: March 5, 1999

RE: House Bill 200 (Slayer/Forfeiture of Property Rights)

This bill amends G.S. 31A-4 (the "slayer statute"), which, generally speaking, is designed to prevent a person who commits an unlawful killing (a "slayer") from inheriting from the victim. The proposed amendment eliminates the unintended result that a slayer, through a wrongful act, could cause a redistribution of an intestate estate. The problem could occur when, in the following chart, A murders P:



If P dies a natural death and dies intestate (without a will), A takes 1/3, B takes 1/3, and X takes 1/3. If A murders P, the slayer statute causes 1/3 of P's property to go to B and 2/3 to be divided equally among P's grandchildren. That is, due to A's wrongful act, X loses about 20% of the amount X would have inherited if P died a natural death (X takes only 1/5 of 2/3 (or 2/15) instead of 1/3). The bill amends G.S. 31A-4 to provide that the victim's property passes in the same way as it would if the slayer renounced an inheritance from P. Using the chart example, B takes 1/3, X takes 1/3, and the remaining 1/3 is divided between R, S, T, and U. If the slayer has no descendents, the decedent's property passes to the decedent's other heirs as in the current law.

The bill also explicitly provides that where the victim dies testate (with a will), the property is distributed as provided in the anti-lapse statute, G.S. 31-42, thereby incorporating part of the holding of the North Carolina Supreme Court in Meisenheimer v. Meisenheimer, 312 N.C. 692, 325 S.E.2d 195 (1985).

VISITOR REGISTRATION SHEET

Judiciary IV 3/11/99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Kim Nixon	Fay. Observer Thug
2.	H.D. Reaves Jr	Home Federal S+L
3.	Laura Hartsell	NC Bar Association
4.	Dale Tolbert	AGO
5.	BL Hall	General Statutes Commission
6.	Floyd Lewis	General Statutes Commission
7.	Andy Romanet	N.C.A.M.
8.	VC McBride	NCAA
9.	Bryan Beatty	DOJ
10.		
11.		
12.		
13.		
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18.		
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21.		

AGENDA

House Committee on Judiciary IV

Thursday, March 18, 1999

WELCOME GUESTS

INTRODUCE PAGES

HB 202 –Amend Professional Corp. Act	Rep. Culpepper
HB 226—Foreclosure Notice	Rep. Culpepper

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

The House Committee on Judiciary IV met on Thursday, March 18, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Cunningham, Decker, Jeffus, Justice, Neely, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys were also present.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 202 Amend Professional Corporation Act. Rep. Culpepper, bill sponsor, was recognized to explain the bill. He brought forth a proposed committee substitute. Rep. Saunders moved for adoption of the proposed committee substitute for purpose of discussion. Doris Bray, Chairman of the General Statutes Commission, was recognized to explain the bill. After a brief discussion, Rep. Neely moved for a favorable report as to committee substitute and unfavorable report as to original bill. Motion carried.

HB 226—Foreclosure Notice. Rep.Culpepper, bill sponsor, was recognized to explain the bill. He brought forth a proposed committee substitute. Rep. Thomas moved for adoption of the proposed committee substitute for purpose of discussion. Rep. Culpepper explained that this bill was a technical correction. Doris Bray was asked to explain the bill. After a brief discussion, Rep. Bowie moved for a favorable report as to committee substitute and unfavorable as to original bill. Motion passed.

The meeting adjourned at 10:45 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 202 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 BILL 202

Short Title: Amend Professional Corp. Act/AB. (Public)

Sponsors: Representatives Culpepper and Jeffus (Primary Sponsors).

Referred to: Judiciary IV.

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-6 reads as rewritten:

"**§ 55B-6. Capital stock.**

~~(a) Except as provided in subsection (b), a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and 89E, for non-licensed employees of such corporation to own not more than one-third of the total issued and outstanding shares of such corporation. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another~~

~~jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a non-licensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to such nonprofessional transferee. Any share of stock of such corporation issued or transferred in violation of this section shall be null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any or all of his stock.~~

~~(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute the stock of the controlled corporation to one or more shareholders of the distributing corporation in accordance with section 355 of the Internal Revenue Code of 1986, as amended. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock was issued to the distributing corporation. A share of stock of the controlled corporation that has not been transferred to a licensee more than 30 days after it was issued to the distributing corporation is void.~~

(a) Subject to subsection (d) of this section and except as provided in subsections (b), (c), and (e) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer shares of stock issued to the shareholder only to another licensee. No share or shares of any stock of a professional corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee is a licensee. The issuance or transfer of any share of stock in violation of this section is null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any of the stock of a professional corporation.

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute in accordance with section 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock of the controlled corporation to one or more shareholders of the distributing corporation authorized under this section to hold the shares. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock is issued to the distributing corporation. A share of stock of the controlled corporation that is not transferred in accordance with this subsection within 30 days after the share was issued to the distributing corporation is void.

(c) Nonlicensed employees of a professional corporation rendering services as defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes may own in the aggregate not more than one-third of the total and outstanding shares of the corporation.

(d) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any succeeding section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees.

(e) Subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, may be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina.

(f) Upon the transfer of any shares of a professional corporation to a nonlicensed employee, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to the nonprofessional transferee."

Section 2. G.S. 55B-16 reads as rewritten:

"**§ 55B-16. Foreign professional corporations.**

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

(1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;

(2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;

(3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;

(4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;

(5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and

(6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the

individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a 'foreign professional corporation' as defined in G.S. 55B-16(b).

(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit that:

(1) Is incorporated under a law other than the law of this State;

(2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6); and

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate.

(b1) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any succeeding section), is deemed for purposes of this section to be an individual licensee if the trustee or trustees of the plan are licensees.

(c) A foreign professional corporation with a valid certificate ~~or~~ of authority has the same but no greater rights and ~~has the same but no greater~~ privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 ~~shall~~ do not apply."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H202-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 202
THIS IS A DRAFT 17-MAR-99 12:38:21
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Amend Professional Corp. Act/AB. (Public)

Sponsors:

Referred to:

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-6 reads as rewritten:

"**§ 55B-6. Capital stock.**

(a) Except as provided in ~~subsection (b),~~ subsection (b) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer ~~such~~ shares of stock issued to ~~him~~ the shareholder only to another ~~such~~ licensee. No share or shares of any stock of ~~such~~ a professional corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee ~~of such shares~~ is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A,

89C, and 89E, for ~~non-licensed~~ nonlicensed employees of ~~such~~ the corporation to own not more than one-third of the total issued and outstanding shares of ~~such corporation.~~ the corporation; and provided further, with respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under Section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a ~~non-licensed~~ nonlicensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to ~~such~~ the nonprofessional transferee. ~~Any share of stock of such corporation issued or transferred~~ The issuance or transfer of any share of stock in violation of this section ~~shall be null and~~ is void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any ~~or all of his stock.~~ of the stock of a professional corporation.

~~(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute the stock of the controlled corporation to one or more shareholders of the distributing corporation in accordance with section 355 of the Internal Revenue Code of 1986, as amended. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock was issued to the distributing corporation. A share of stock of the controlled corporation that has not been transferred to a licensee more than~~

~~30 days after it was issued to the distributing corporation is void.~~

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute in accordance with section 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock of the controlled corporation to one or more shareholders of the distributing corporation authorized under this section to hold the shares. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock is issued to the distributing corporation. A share of stock of the controlled corporation that is not transferred in accordance with this subsection within 30 days after the share was issued to the distributing corporation is void."

Section 2. G.S. 55B-16 reads as rewritten:

"**§ 55B-16. Foreign professional corporations.**

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

(1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;

(2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;

(3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;

(4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;

(5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and

(6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation

and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a 'foreign professional corporation' as defined in G.S. 55B-16(b).

(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit that:

(1) Is incorporated under a law other than the law of this State;

(2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6); and

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate.

(b1) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any succeeding section), is deemed for purposes of this section to be an individual licensee if the trustee or trustees of the plan are licensees.

(c) A foreign professional corporation with a valid certificate ~~or~~ of authority has the same but no greater rights and ~~has the same but no greater~~ privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 ~~shall~~ do not apply."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 202
Proposed Committee Substitute H202-PCS3151-RG

Short Title: Amend Professional Corp. Act/AB. (Public)

Sponsors:

Referred to:

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-6 reads as rewritten:

"**§ 55B-6. Capital stock.**

(a) Except as provided in ~~subsection (b),~~ subsection (b) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer ~~such~~ shares of stock issued to ~~him~~ the shareholder only to another ~~such~~ licensee. No share or shares of any stock of ~~such~~ a professional corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee ~~of such shares~~ is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and 89E, for ~~non-licensed~~ nonlicensed employees of ~~such~~ the corporation to own not more than one-third of the total issued and outstanding shares of ~~such corporation.~~ the corporation; and provided further, with respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section

401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a ~~non-licensed~~ nonlicensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to ~~such~~ the nonprofessional transferee. ~~Any share of stock of such corporation issued or transferred~~ The issuance or transfer of any share of stock in violation of this section ~~shall be null and~~ is void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any ~~or all of his stock.~~ of the stock of a professional corporation.

~~(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute the stock of the controlled corporation to one or more shareholders of the distributing corporation in accordance with section 355 of the Internal Revenue Code of 1986, as amended. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock was issued to the distributing corporation. A share of stock of the controlled corporation that has not been transferred to a licensee more than 30 days after it was issued to the distributing corporation is void.~~

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute in accordance with section 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock of the controlled corporation to one or more shareholders of the distributing corporation authorized under this section to hold the shares. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock is issued to the distributing corporation. A share of stock of the controlled corporation that is not transferred in accordance with this subsection within 30 days after the share was issued to the distributing corporation is void."

Section 2. G.S. 55B-16 reads as rewritten:

"**§ 55B-16. Foreign professional corporations.**

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

(1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;
(2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;
(3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;
(4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;
(5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and
(6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a 'foreign professional corporation' as defined in G.S. 55B-16(b).

(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit that:

(1) Is incorporated under a law other than the law of this State;
(2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6); and
(3) Has as its shareholders only individuals who:
  a. Qualify to hold shares of a corporation organized under this Chapter;
  b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or
  c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate.

(b1) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any succeeding section), is deemed for purposes of this section to be an individual licensee if the trustee or trustees of the plan are licensees.

(c) A foreign professional corporation with a valid certificate ~~or~~ of authority has the same but no greater rights and ~~has the same but no greater~~ privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 ~~shall~~ do not apply."

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

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: March 16, 1999

RE: House Bill 202 (Amend Professional Corporation Act)

House Bill 202 makes two basic changes to Chapter 55B of the General Statutes.

Section 1 amends G.S. 55B-6. This statute in its current form generally restricts ownership of stock in a professional corporation to individuals who are licensed in this State in the corporation's field of practice ("licensees"); it then sets out certain exceptions to the general restriction. As one of the already-existing exceptions, nonlicensed employees of professional corporations in the fields of architecture, landscape architecture, engineering, land surveying, and geological services can own up to one-third of their employer-corporation's stock. The amendment to G.S. 55B-6 allows these same corporations to have their stock owned by a qualified employee retirement plan without being subject to this one-third limit if the trustee of the plan is a licensee. In other words, a qualified employee retirement plan will count as a licensee for purposes of G.S. 55B-6's restriction on stock ownership if the trustee is a licensee. A "qualified employee retirement plan" is one that qualifies under Section 401 of the Internal Revenue Code of 1986. There are two types, employee stock option plans (ESOPs) and profit sharing plans.

The remaining amendments to G.S. 55B-6 are intended only to update the language and format of the section.

Section 2 amends G.S. 55B-16, which deals with foreign professional corporations (professional corporations incorporated in another state), to extend the same treatment as in Section 1 to foreign professional corporations. Section 2 also amends G.S. 55B-16(b)(2) to allow a foreign professional corporation to qualify to do business in this State even though it is allowed in its "home" state to render services broader than those permitted to be rendered by a professional corporation incorporated in this State; its activities in this State, however, are limited to those permitted in this State.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 226 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE ADDITIONAL INFORMATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 226*

Short Title: Foreclosure Notice/AB. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE ADDITIONAL INFORMATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-21.16(c) reads as rewritten:

"(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

(1) The particular real estate security interest being foreclosed, with such a description as is necessary to identify the real property, including the date, original amount, original holder, and book and page of the security instrument.

(2) The name and address of the holder of the security instrument at the time that the notice of hearing is filed.

(3) The nature of the default claimed.

(4) The fact, if such be the case, that the secured creditor has accelerated the maturity of the debt.

(5) Any right of the debtor to pay the indebtedness or cure the default if such is permitted.

(5a) The holder has confirmed in writing to the person giving the notice, or if the holder is giving the notice, the holder shall confirm in the notice, that, within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known address a written statement of the amount of principal and interest

that the holder claims in good faith is owed as of the date of the written statement, a daily interest charge based on the contract rate as of the the date of the statement, and the amount of other expenses the holder contends it is owed as of the date of the statement.

(6) Repealed by Session Laws 1977, c. 359, s. 7.

(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain a statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should he elect to do so.

(8) That if the foreclosure sale is consummated, the purchaser will be entitled to possession of the real estate as of the date of delivery of his deed, and that the debtor, if still in possession, can then be evicted.

(8a) The name, address, and telephone number of the trustee or mortgagee.

(9) That the debtor should keep the trustee or mortgagee notified in writing of his address so that he can be mailed copies of the notice of foreclosure setting forth the terms under which the sale will be held, and notice of any postponements or resales.

(10) If the notice of hearing is intended to serve also as a notice of sale, such additional information as is set forth in G.S. 45-21.16A.

(11) That the hearing may be held on a date later than that stated in the notice and that the party will be notified of any change in the hearing date."

Section 2. G.S. 45-21.16 is amended by adding a new subsection to read:

"(c1) The person giving the notice of hearing, if other than the holder, may rely on the written confirmation received from the holder under subdivision (c)(5a) of this section and is not liable for inaccuracies in the written confirmation. Any dispute concerning the written statement sent to the debtor under subdivision (c)(5a) of this section shall not be considered in a foreclosure hearing under this section but may be considered in an action to enjoin the foreclosure sale under G.S. 45-21.34."

Section 3. This act becomes effective January 1, 2000, and applies to notices of hearing served on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H226-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 226
THIS IS A DRAFT 16-MAR-99 17:36:43
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Foreclosure Notice/AB. (Public)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE ADDITIONAL INFORMATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-21.16(c) reads as rewritten:

"(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

(1) The particular real estate security interest being foreclosed, with such a description as is necessary to identify the real property, including the date, original amount, original holder, and book and page of the security instrument.

(2) The name and address of the holder of the security instrument at the time that the notice of hearing is filed.

(3) The nature of the default claimed.

(4) The fact, if such be the case, that the secured creditor has accelerated the maturity of the debt.

(5) Any right of the debtor to pay the indebtedness or cure the default if such is permitted.

(5a) The holder has confirmed in writing to the person giving the notice, or if the holder is giving the notice, the holder shall confirm in the notice, that, within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known address a written statement of the amount of principal and interest that the holder claims in good faith is owed as of the date of the written statement, a daily interest charge based on the contract rate as of the the date of the statement, and the amount of other expenses the holder contends it is owed as of the date of the statement.

(6) Repealed by Session Laws 1977, c. 359, s. 7.

(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain a statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should he elect to do so.

(8) That if the foreclosure sale is consummated, the purchaser will be entitled to possession of the real estate as of the date of delivery of his deed, and that the debtor, if still in possession, can then be evicted.

(8a) The name, address, and telephone number of the trustee or mortgagee.

(9) That the debtor should keep the trustee or mortgagee notified in writing of his address so that he can be mailed copies of the notice of foreclosure setting forth the terms under which the sale will be held, and notice of any postponements or resales.

(10) If the notice of hearing is intended to serve also as a notice of sale, such additional information as is set forth in G.S. 45-21.16A.

(11) That the hearing may be held on a date later than that stated in the notice and that the party will be notified of any change in the hearing date."

Section 2. G.S. 45-21.16 is amended by adding a new subsection to read:

"(c1) The person giving the notice of hearing, if other than the holder, may rely on the written confirmation received from the holder under subdivision (c)(5a) of this section and is not liable for inaccuracies in the written confirmation. Any dispute concerning the mailing or accuracy of the written statement described in subdivision (c)(5a) of this section shall not be considered in a hearing under this section."

Section 3. This act becomes effective January 1, 2000, and applies to notices of hearing served on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 226*
Proposed Committee Substitute H226-PCS6078-RG

Short Title: Foreclosure Notice/AB. (Public)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE ADDITIONAL INFORMATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-21.16(c) reads as rewritten:

"(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

(1) The particular real estate security interest being foreclosed, with such a description as is necessary to identify the real property, including the date, original amount, original holder, and book and page of the security instrument.

(2) The name and address of the holder of the security instrument at the time that the notice of hearing is filed.

(3) The nature of the default claimed.

(4) The fact, if such be the case, that the secured creditor has accelerated the maturity of the debt.

(5) Any right of the debtor to pay the indebtedness or cure the default if such is permitted.

(5a) The holder has confirmed in writing to the person giving the notice, or if the holder is giving the notice, the holder shall confirm in the notice, that, within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known

address a written statement of the amount of principal and interest that the holder claims in good faith is owed as of the date of the written statement, a daily interest charge based on the contract rate as of the date of the statement, and the amount of other expenses the holder contends it is owed as of the date of the statement.

(6) Repealed by Session Laws 1977, c. 359, s. 7.

(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain a statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should he elect to do so.

(8) That if the foreclosure sale is consummated, the purchaser will be entitled to possession of the real estate as of the date of delivery of his deed, and that the debtor, if still in possession, can then be evicted.

(8a) The name, address, and telephone number of the trustee or mortgagee.

(9) That the debtor should keep the trustee or mortgagee notified in writing of his address so that he can be mailed copies of the notice of foreclosure setting forth the terms under which the sale will be held, and notice of any postponements or resales.

(10) If the notice of hearing is intended to serve also as a notice of sale, such additional information as is set forth in G.S. 45-21.16A.

(11) That the hearing may be held on a date later than that stated in the notice and that the party will be notified of any change in the hearing date."

Section 2. G.S. 45-21.16 is amended by adding a new subsection to read:

"(c1) The person giving the notice of hearing, if other than the holder, may rely on the written confirmation received from the holder under subdivision (c)(5a) of this section and is not liable for inaccuracies in the written confirmation. Any dispute concerning the mailing or accuracy of the written statement described in subdivision (c)(5a) of this section shall not be considered in a hearing under this section."

Section 3. This act becomes effective January 1, 2000, and applies to notices of hearing served on or after that date.

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: March 16, 1999

RE: House Bill 226 (Foreclosure Notice)

House Bill 226 amends G.S. 45-21.16 to require that the notice of hearing sent to debtors in a foreclosure proceeding include additional information. Specifically, the notice must state that the holder of the instrument securing the debt (the person to whom the debt is owed) either confirms in the notice or has confirmed in writing to the person giving the notice that, within 30 days of the date of the notice, the holder has mailed the debtor a statement containing specific information about the amount the debtor owes. Where the person giving the notice is not the holder, as in a deed of trust, the bill includes a provision allowing the trustee to rely on the holder's written confirmation and shielding the trustee from liability for any inaccuracies in this confirmation. The bill also contains a provision expressly stating that disputes over the accuracy of the statement or the mailing of the statement may not be raised in the foreclosure hearing itself.

The bill results from reports to the General Statutes Commission of homeowners in foreclosure proceedings who were trying to arrange new financing and had difficulty getting information on the amount they owed.

VISITOR REGISTRATION SHEET

J IV
Name of Committee

3/18/99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mark Beason	The Capitol Group
Sara Taylor	Womble Carlyle
Linda Bree	SOS
Dl Tutt	Bd. of Examiners for Engineers & Surveyors
KEITH PRICE	ANDERSON & ASSOCS.
Michael E. Davis	Anderson & Assoc, Inc.
Jim Ramquist	NCSOS
Bill Rowe	NC Justice Center
Leonard Allen	SOS
Tempy Jo Burr	NCMS
Beckie Abed	PPAB
P Bry Hull	General Statutes Commission
Floyd Lewis	General Statutes Commission

Pages: Craig Simon - Wake Co.
Ryan Roberson - Wake Co.

AGENDA

HOUSE JUDICIARY IV COMMITTEE

March 23, 1999
Room 437 LOB
10:00 AM

CALL TO ORDER:

REPRESENTATIVE PHIL BADDOUR, CHAIRMAN

Tim Hovis – Committee Staff
Esther Manheimer – Committee Staff
Jackie Hamby - Committee Assistant

BILL(s) TO BE CONSIDERED:

HB 331 'SENTENCING SERVICES PROGRAM'
(Sponsor: Representative Bowie)

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

March 23, 1999

The House Committee on Judiciary IV met on Tuesday, March 23, 1999, at 10:00 a.m. in Room 421 of the Legislative Office Building. Chairman Phil Baddour presided. Other members present were: Vice Chairman Scott Thomas, Representative(s) Bowie, Decker, Jeffus, McMahan, Neely, and Saunders. The Visitor Registration sheet is attached for the record.

The Chairman called the meeting to order and recognized the Pages for the week. He then called for consideration of the following bill:

HB 331 A BILL ENTITLED AN ACT TO REDEGSIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES. Representative Bowie and Representative Baddour were the primary sponsors of HB 331.

The Chairman recognized Representative Thomas who made a motion for the adoption of a proposed committee substitute for HB 331 for the purpose of discussion. The motion carried. Chairman Baddour asked Representative Bowie to explain the bill. Following her explanation, Mr. John Madden, Associate Director of the Sentencing Commission, was recognized to give a brief overview of the bill.

Chairman Baddour took questions from members of the Committee, and representatives of the Administrative Office of the Courts, and the Department of Corrections.

Representative McMahan made a motion for a favorable report of the committee substitute for HB 331, unfavorable to the original bill and the motion carried.

The meeting adjourned at 10:50 am.

Representative Philip A. Baddour, Jr.
Chairman

Jackie Hamby
Committee Assistant

Filed
March 23, 1999

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 331 A BILL TO BE ENTITLED AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING 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).

☐ 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

J-IV
March 23, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 331*

Short Title: Sentencing Services Program/AB. (Public)

Sponsors: Representatives Bowie, Baddour (Primary Sponsors); and Alexander.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

"~~Community Penalties Program Act of 1983.~~

Sentencing Services Programs.

"**§ 7A-770. Purpose.**

This Article shall be known and may be cited as the ~~"Community Penalties Act of 1983."~~ "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with ~~community sentences to be used in lieu of and at less cost than imprisonment.~~ information that will assist that system in imposing sentences that make the most effective use of available resources. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local ~~sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.~~ programs that can provide judges and other court officials with information about local correctional programs

that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.

(2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of ~~community penalties~~ sentencing services to assure that they are specifically designed to meet local needs.

(4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added.~~ Effective use of available community corrections programs by advising judges and other court officials of the offenders most suited for a particular program.

"**§ 7A-771. Definitions.**

As used in this Article:

(1) ~~"Community penalties~~ "Sentencing services program" means an agency or State-run office within the ~~judicial~~ superior court district which shall (i) prepare ~~community penalty~~ sentencing plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans.~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.

(2) ~~"Community penalty~~ "Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the ~~targeted offender's proposed community penalty.~~ offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.

(2a) "Director" means the Director of the Administrative Office of the Courts.

(2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.

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

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

~~(5) "Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior~~

~~record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties~~ sentencing services programs. ~~Community penalties~~ Sentencing services programs that are grantees shall use ~~such~~ the funds ~~to develop, implement, and monitor community penalty plans.~~ exclusively to develop a sentencing services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties~~ sentencing services programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties~~ sentencing services programs under this Article shall be administered by the Administrative Office of the Courts.

"§ 7A-773. Responsibilities of a ~~community penalties~~ sentencing services program.

A ~~community penalties~~ sentencing services program shall be responsible for:

(1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~ Identifying offenders who:

a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;

b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and

c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.

(2) Preparing detailed ~~community penalty~~ sentencing services plans requested pursuant to G.S. 7A-773.1 for presentation to the

sentencing ~~judge by the offender's attorney or at the request of the sentencing judge.~~ judge.

(3) Contracting or arranging with public or private agencies for services described in the ~~community penalty~~ sentencing plan.

~~(4) Monitoring the progress of offenders under community penalty plans.~~

"§ 7A-773.1. Who may request plans; disposition of plans; contents of plans.

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-733(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request, at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"§ 7A-774. **Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.**

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the ~~judicial~~ superior court district, as prescribed by the Director. The plan shall be updated annually and shall be submitted to the senior resident superior court judge for the superior court district for the judge's advice and written endorsement. The

plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

(1) ~~Objectives~~ Goals and objectives of the ~~community penalties~~ sentencing services program.

(2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.

(3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).

(4) Procedures for preparing and presenting ~~community penalty~~ plans to the court.

(4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.

~~(6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~

~~(7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~

~~(8) Procedures for evaluating the program's effect on numbers of prison commitments.~~

"§ 7A-775. ~~Community penalties~~ Sentencing services board.

(a) Each ~~community penalties~~ sentencing services program shall establish a ~~community penalties~~ sentencing services board to provide direction and assistance to the ~~community penalties~~ sentencing services program in the implementation and evaluation of the plan. ~~Community penalties~~ Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~community penalties~~ sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~community penalties~~ sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);

~~(1)~~ (1a) Development of an annual budget for the program;

(2) Hiring, firing, and evaluation of program personnel;

(3) Selection of board members;
(4) Arranging for ~~a private and independent~~ an annual ~~audit;~~ audit, in accordance with G.S. 143-6.1;
(5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions.

"§ 7A-776. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement.~~ confinement, of for any purpose other than the operation of a sentencing services program that complies with this Article.

"§ 7A-777. Evaluation.

The Director shall evaluate each ~~community penalties~~ sentencing services program on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program. The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions.~~ program effectively meets the needs of the courts in its judicial district by providing sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.
~~In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.~~"

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:
(1) Stipulation of the parties.
(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima xfacie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

J. IV

March 23, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 331*
H331-PCSSK-001
Warning: line numbers may change after adoption.

Short Title: Sentencing Services Program/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

"~~Community Penalties Program Act of 1983.~~
Sentencing Services Programs.

"§ 7A-770. Purpose.

This Article shall be known and may be cited as the ~~"Community Penalties Act of 1983."~~ "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with ~~community sentences to be used in lieu of and at less cost than imprisonment.~~ information that will assist that system in imposing sentences that make the most

effective use of available resources. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local ~~sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.~~ programs that can provide judges and other court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.

(2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of ~~community penalties~~ sentencing services to assure that they are specifically designed to meet local needs.

(4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added.~~ Effective use of available community corrections programs by advising judges and other court officials of the offenders most suited for a particular program.

"§ 7A-771. Definitions.

As used in this Article:

(1) ~~"Community penalties~~ "Sentencing services program" means an agency or State-run office within the ~~judicial~~ superior court district which shall (i) prepare ~~community penalty~~ sentencing plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans.~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.

(2) ~~"Community penalty~~ "Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the ~~targeted offender's proposed community penalty.~~ offender's background, including available information about past criminal activity, a matching of the specific offender's needs with

available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.

(2a) "Director" means the Director of the Administrative Office of the Courts.

(2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.

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

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

~~(5) "Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties~~ sentencing services programs. ~~Community penalties~~ Sentencing services programs that are grantees shall use ~~such~~ the funds ~~to develop, implement, and monitor community penalty plans.~~ exclusively to develop a sentencing services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties~~ sentencing services programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt

from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties~~ sentencing services programs under this Article shall be administered by the Administrative Office of the Courts.

"**§ 7A-773. Responsibilities of a ~~community penalties~~ sentencing services program.**

A ~~community penalties~~ sentencing services program shall be responsible for:

(1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~ Identifying offenders who:

a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;

b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and

c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.

(2) Preparing detailed ~~community penalty~~ sentencing services plans requested pursuant to G.S. 7A-773.1 for presentation to the sentencing ~~judge by the offender's attorney or at the request of the sentencing judge.~~ judge.

(3) Contracting or arranging with public or private agencies for services described in the ~~community penalty~~ sentencing plan.

~~(4) Monitoring the progress of offenders under community penalty plans.~~

"**§ 7A-773.1. Who may request plans; disposition of plans; contents of plans.**

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-773(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request,

at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"**§ 7A-774. Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.**

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the ~~judicial~~ superior court district, as prescribed by the Director. The plan shall be updated annually and shall be submitted to the senior resident superior court judge for the superior court district for

the judge's advice and written endorsement. The plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

(1) ~~Objectives~~ Goals and objectives of the ~~community penalties~~ sentencing services program.

(2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.

(3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).

(4) Procedures for preparing and presenting ~~community penalty~~ plans to the court.

(4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.

~~(6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~

~~(7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~

~~(8) Procedures for evaluating the program's effect on numbers of prison commitments.~~

"§ 7A-775. ~~Community penalties~~ Sentencing services board.

(a) Each ~~community penalties~~ sentencing services program shall establish a ~~community penalties~~ sentencing services board to provide direction and assistance to the ~~community penalties~~ sentencing services program in the implementation and evaluation of the plan. ~~Community penalties~~ Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~community penalties~~ sentencing services board shall consist of not less than 12 members, and shall

include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~community penalties~~ sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);

~~(1)~~ (1a) Development of an annual budget for the program;

(2) Hiring, firing, and evaluation of program personnel;

(3) Selection of board members;

(4) Arranging for ~~a private and independent~~ an annual ~~audit;~~ audit, in accordance with G.S. 143-6.1;

(5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions."

"§ 7A-776. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement.~~ confinement, or for any purpose other than the operation of a sentencing services program that complies with this Article."

"§ 7A-777. Evaluation.

The Director shall evaluate each ~~community penalties~~ sentencing services program on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program. The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions.~~ program effectively meets the needs of the courts in its judicial district by providing them with sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised

probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a).

b. Assignment to a residential program.

c. House arrest with electronic monitoring.

d. Intensive probation.

e. Assignment to a day-reporting center.

~~In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.~~"

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is

made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

J. IV
March 23, 1999

HOUSE BILL 331:
Sentencing Services Program

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Representative Bowie
Date:	March 23, 1999	**Summary by:**	Esther Manheimer
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 331 renames the Community Penalties Program as the Sentencing Services Program. In addition, this act shifts the focus of the program from one that provided courts with community sentences in an effort to reduce prison commitments and monitored offenders on community penalty plans, to a program that provides information to the courts, develops sentencing services plans, and does not monitor offenders participating in sentencing services plans.

BILL ANALYSIS:

Section 1.

- **Amends G.S. 7A-770** to rename the Community Penalties Program as the Sentencing Services Program. Changes the purpose of the Article from reducing prison overcrowding through the use of community sentences to establishing a statewide sentencing services program that will provide courts with information necessary to make effective use of resources. Specifically, provide court officials with information regarding local correctional programs and the offenders best suited for those programs.
- **Amends G.S. 7A-771** to make various conforming changes. Deletes provision regarding the monitoring of offenders placed on community penalty plans. The sentencing services program would assist offenders in initially obtaining services as part of a sentencing plan if assistance is not otherwise available. Sentencing plans will provide information about the offender's past criminal activity, matching offender's needs with available resources, and recommendations for an intermediate sentence. Changes judicial district to superior court district. Repeals definition of "targeted offenders."
- **Amends G.S. 7A-772** to make various conforming changes. In addition, specifies that sentencing services programs receiving grants awarded by the Director shall use the fund exclusively to develop a sentencing services program that provides sentencing services information to court officials. The Director must consider, in the awarding of grants, the agencies' comprehensive sentencing services program plan and whether the senior resident superior court judge has endorsed the plan.
- **Amends G.S. 7A-773** to require the sentencing services program to identify offenders who qualify for the program (felony offenders where an active sentence is not required, who are at high risk of committing future crimes, and would benefit from a sentencing services program plan) and prepare sentencing services plans. The provision dealing with intermediate punishment is deleted. The provision requiring monitoring of offenders is also deleted.
- **G.S. &A-773.1 is a new section** which provides that:
  - Where the offenders meet the three criteria in G.S. 7A-773, the judge presiding over the case, the defendant, or the prosecutor may request that the sentencing services program provide a

sentencing plan. The judge must make the request prior to the imposition of sentence. The defendant or prosecutor must make the request prior to a guilty plea or guilty verdict. In addition, the judge may also request a plan in certain misdemeanor cases. Prior to the adjudication and within a reasonable time after the sentencing plan request was made, the defendant may opt out of the plan. The comprehensive sentencing services program plan (as required by G.S. 7A-774) shall define what constitutes a reasonable time.

- Sentencing plans are presented to the court, the defendant, and the State.
- Sentencing plans may include: recommendations for use of any treatment or correctional resources available, identify resources to meet any educational, treatment, control, or other needs, and plans may report that no intermediate punishment is appropriate.
- Finally, sentencing services program staff may work with offenders before a plea is entered. No information obtained in preparing a sentencing plan may be used by the State in establishing guilt.

- **Amends G.S. 7A-774** to establish the requirement that an annual comprehensive sentencing services program plan be prepared and submitted to the senior resident superior court judge for advice and endorsement. Plans shall then be submitted to the Director. Plans shall include: goals and objectives, offenders for whom the programs will provide sentencing information to the courts, procedures for identifying qualifying offenders, and strategies for ensuring that judges use the program's services. Language regarding the monitoring of offenders in the program and the number of prison commitments has been deleted.
- **Amends G.S. 7A-775** to make various conforming changes regarding sentencing services boards.
- **Amends G.S. 7A-776** to require that funds not be used for any other purpose other than the operation of sentencing services programs.
- **Amends G.S. 7A-777** to remove language regarding the reduction of prison commitments. Requires that the Director evaluate each sentencing services program.

Section 2.

- **Amends G.S. 15A-1340.11(6)** to remove sentencing plans from being intermediate punishments.

Section 3.

- **Amends G.S. 15A-1340.14(f)** to require a district attorney to provide, to the sentencing services program, any information the D.A. has about the criminal record of an offender for whom the program has been requested to provide a sentencing plan.

Section 4.

Section 2 becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder becomes effective October 1, 1999. Community penalties plans requested prior to October 1, 1999, shall be governed by the law in effect at the time the plan was requested.

VISITOR REGISTRATION SHEET

Judiciary IV 3/23/99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	John Mader	Sentencing Commission
2.	Sandra Pearce	DOC
3.	[illegible]	DOC
4.	Lorrin Freeman	Sentencing Commission
5.	Pat Dorer	NC Conference of D.As
6.	Lee Rutherford	CYPC
7.	PB Powell	AOC
8.	LiAnn Wallace	AOC
9.	Barbara Peterson	ReEntry, LLC.
10.	[illegible]	ReEntry, LLC
11.	Jeanne Bonds	AOC
12.	Mercedes Pollock	NCAMPHA
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		

AGENDA

HOUSE JUDICIARY IV COMMITTEE

March 25, 1999
Room 421 LOB
10:00 AM

CALL TO ORDER:

REPRESENTATIVE PHIL BADDOUR, CHAIRMAN

TIM HOVIS	–	COMMITTEE STAFF
ESTHER MANHEIMER	–	COMMITTEE STAFF
JACKIE HAMBY	–	COMMITTEE ASSISTANT

BILL(s) TO BE CONSIDERED:

HB 290 "AMEND CRIME VICTIMS COMP. ACT"
Primary Sponsors: Representative(s) Baddour and Haire

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

March 25, 1999

The House Committee on Judiciary IV met on Thursday, March 25, 1999, at 10:00 a.m. in Room 421 of the Legislative Office Building. Chairman Phil Baddour presided. Other members present were: Vice Chairman Thomas, Vice Chairman Haire, Representative(s) Bowie, Culpepper, Jeffus, and Saunders. The Visitor Registration sheet is attached for the record.

The Chairman called the meeting to order and recognized the Pages for the week. He then called for consideration of the following bill:

HB 290 – AN ACT TO AMEND THE CRIME VICTIMS' COMPENSATION ACT BY INCREASING THE MEMBERSHIP OF THE CRIME VICTIMS' COMPENSATION COMMISSION, BY INCREASING THE SIZE OF INITIAL CLAIMS THAT MAY BE AWARDED BY THE DIRECTOR OF THE COMMISSION, AND BY PROVIDING THE COMMISSION WITH THE DISCRETION TO PAY CERTAIN CLAIMS PREVIOUSLY DENIED.
Representative Baddour and Representative Haire were primary sponsors of HB 290.

Chairman Baddour asked Representative Haire to explain HB 290. A staff summary of the bill is attached. Following his explanation, Representative Haire suggested that the committee hear from Mr. Gary Ikleberry of Goldsboro, Director of the Victims' Compensation Commission, who explained how the process occurs whereby a claim is processed through the Commission.

Following input from members of the Committee, Representative Culpepper moved for a favorable report of HB 290 and the motion carried.

The meeting adjourned at 10:30 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Jackie Hamby
Committee Assistant

Full
3/25/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 290 A BILL TO BE ENTITLED AN ACT TO AMEND THE CRIME VICTIMS' COMPENSATION ACT BY INCREASING THE MEMBERSHIP OF THE CRIME VICTIMS' COMPENSATION COMMISSION, BY INCREASING THE SIZE OF INITIAL CLAIMS THAT MAY BE AWARDED BY THE DIRECTOR OF THE COMMISSION, AND BY PROVIDING THE COMMISSION WITH THE DISCRETION TO PAY CERTAIN CLAIMS PREVIOUSLY DENIED.

☒ 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

J. IV
March 25, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 290 Favorable

Short Title: Amend Crime Victims Comp. Act/AB. (Public)

Sponsors: Representatives Baddour; Haire (Primary Sponsors), Alexander, and Wainwright.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS' COMPENSATION ACT BY INCREASING THE MEMBERSHIP OF THE CRIME VICTIMS' COMPENSATION COMMISSION, BY INCREASING THE SIZE OF INITIAL CLAIMS THAT MAY BE AWARDED BY THE DIRECTOR OF THE COMMISSION, AND BY PROVIDING THE COMMISSION WITH THE DISCRETION TO PAY CERTAIN CLAIMS PREVIOUSLY DENIED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15B-3(a) reads as rewritten:

"(a) There is established the Crime Victims Compensation Commission of the Department of Crime Control and Public Safety, consisting of ~~five~~ seven members as follows:

(1) One member to be appointed by the Governor;

(2) One member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121;

(3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;

(4) The Attorney General or ~~his~~ the Attorney General's designee; ~~and~~

(5) The Secretary of the Department of Crime Control and Public Safety or ~~his designee.~~ the Secretary's designee; and

(6) Two members to be appointed by the Secretary of the Department of Crime Control and Public Safety."

Section 2. G.S. 15B-10 reads as rewritten:

"**§ 15B-10. Awarding claims.**

(a) The Director shall decide the award of compensation for an initial claim or follow-up claim when the claim does not exceed ~~five thousand dollars ($5,000)~~ seven thousand five hundred dollars ($7,500) and does not include future economic loss. The Director shall report all awards under this subsection to the Commission.

(b) The Director shall recommend the award of compensation for an initial claim or follow-up claim when the claim exceeds ~~five thousand dollars ($5,000)~~ seven thousand five hundred dollars ($7,500) or involves future economic loss. The Commission shall decide the award of compensation for a claim based on a review of written evidence submitted to the Commission by the Director.

(c) In reporting a decision under subsection (a) or recommending a decision under subsection (b), the Director shall submit to the Commission documentation to establish the economic loss of the claimant by substantial evidence.

(d) The Director shall send each claimant a written statement of a decision made under subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with a decision may commence a contested case under Article 3 of Chapter 150B of the General Statutes."

Section 3. G.S. 15B-11(a) reads as rewritten:

"**§ 15B-11. Grounds for denial of claim or reduction of award.**

(a) An award of compensation shall be denied if:

(1) The claimant fails to file an application for an award within two years after the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the award;

(2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;

(3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;

(4) The award would benefit the offender or the offender's accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case;

(5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility; or

(6) The victim was participating in a felony ~~or a nontraffic misdemeanor~~ at or about the time that the victim's injury occurred.

(b) A claim may be denied ~~and~~ or an award of compensation may be reduced ~~upon a finding of contributory misconduct by the claimant or a victim through whom the claimant claims.~~ if:

(1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred; or

(2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

The Commission shall use its discretion in determining whether to deny a claim under this subsection. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.

(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for the award.

(c1) A claim may be denied upon a finding that the claimant has been convicted of any felony classified as a Class A, B1, B2, C, D, or E felony under the laws of the State of North Carolina and that such felony was committed within 3 years of the time the victim's injury occurred.

(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g). The existence of a collateral source that would pay expenses directly related to a funeral, cremation, and burial, including transportation of a body, shall not constitute grounds for the denial or reduction of an award of compensation.

(e) Repealed by Session Laws 1998-212, s. 19.4(m).

(f) Compensation for replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars ($200.00) per week. Compensation for work loss and household support loss may not exceed three hundred dollars ($300.00) per week.

(g) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to, or the death of, that victim may not exceed thirty thousand dollars ($30,000) in the aggregate in addition to allowable funeral, cremation, and burial expenses.

(h) The right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review."

Section 4. This act becomes effective July 1, 1999, and applies to all claims for which the criminally injurious conduct occurred on or after that date.

J. IV
March 25, 1999

HOUSE BILL 290:
Amend Crme Victims Comp. Act/AB

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representatives Baddour and Haire
Date:	March 24, 1999		
Version:	First Edition	**Summary by:**	Tim Hovis Committee Counsel

SUMMARY: House Bill 290 makes the following changes to Chapter 15B of the General Statutes, Crime Victims Compensation Act: (1) increases the number of members on the Crime Victims Compensation Commission from five to seven; (2) increases the amount of an award which the Director may make without the Commission's approval from $5,000 to $7,500; and (3) gives the Commission discretion to award a claim even if the victim was participating in a nontraffic misdemeanor at the time of the injury.

BILL ANALYSIS: The bill makes several changes to Chapter 15B of the General Statutes, the Crime Victims Compensation Act.

(1) Under current law, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House each appoint one member to the Commission. The Attorney General and the Secretary of Crime Control and Public Safety, or their designees, also serve as members.

House Bill 290 authorizes the Secretary of Crime Control and Public Safety to appoint two additional members to the Commission.

(2) Pursuant to G.S. 15B-10, the Director of the Commission may award compensation, without the approval of the Commission, for a claim that does not exceed $5,000. Claims exceeding this amount are decided by the Commission based upon a review of the evidence and a recommendation of compensation by the Director.

In 1998, the total amount of compensation that may be awarded to a victim or claimant under the Act was increased from $20,000 to $30,000. However, the amount of an award that may be made by the Director was not increased at that time. **House Bill 290 increases this amount from $5,000 to $7,500.**

(3) Under current law, a victim's compensation claim must be denied if the victim was participating in a felony or nontraffic misdemeanor at or about the time that the victim's injury occurred. A claim may be denied upon a finding that the claimant or a victim through whom the claimant claims engaged in contributory misconduct.

House Bill 290 gives the Commission discretion to award a claim even if the victim was participating in a nontraffic misdemeanor at the time of the injury. In using its discretion to award or deny a claim, the Commission may consider whether proximate cause exists between the victim's injury and the misdemeanor.

House Bill 290 becomes effective July 1, 1999, and applies to claims for conduct occurring on or after that date.

VISITOR REGISTRATION SHEET

Judiciary IV 3/25/99 March 25, 1999

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
FRED TAYLOR	WRAL-TV
Christine Gerber	NCFAN
Leslie Starobinsaneck	Gov's Domestic Violence T.F.
Pamela Lammers	NC Equity
DENNIS PATTERSON	AP

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 1, 1999

The House Committee on JUDICIARY IV met on Tuesday, April 1, 1999 in Room 421 of the Legislative Office Building at 10:00 a.m. Chairman Baddour presided. Other members present were Vice Chairman Haire, Vice Chairman Thomas, Representative (s) Bowie; Culpepper; Decker; Jeffus; McMahan; Neely; and Saunders. Mr. Tim Hovis and Ms. Esther Manheimer, Committee Staff, were also present. The Visitor Registration Sheet is attached for the record.

The Chairman called the meeting to order and recognized the Pages for the week.

The following bill was considered:

HOUSE BILL 272 A BILL ENTITLED AN ACT TO MAKE THE IN-STATE VIOLATION OF A CHILD CUSTODY ORDER A MISDEMEANOR.
Representative Saunders made a motion that the proposed Committee Substitute for HB 272 be put before the Committee for discussion. The motion carried. Representative Thomas was then recognized to explain the proposed committee substitute. There was lengthy discussion of HB 272 with questions raised by members of the Committee.

Mr. John Williams of the Department of Crime Control was recognized to express his concerns of HB 272. He remarked on "gaps" in the law and stated his support for a workable form of legislation for the safety and welfare of children.

Mr. George Millsap, a concerned citizen, was recognized to express his support and concern as a non-custodial parent.

Mr. Colin Willoughby, District Attorney of Wake County, was asked to remark on the courts' viewpoint and was questioned on the matter of child abduction in the bill..

Due to the complexity of HB 272, such as the forty-eight hour limitation and other language in the the bill, Chairman Baddour announced that there would be no vote taken at this meeting, but that a sub-committee would be assigned to further study the language. He requested that the sub-committee report its recommendations back to the full committee within a reasonable timeframe. *The following members were assigned: Representative Thomas, Chairman; Representative Bowie, and Representative Culpepper.*

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

Representative Phil Baddour, Chairman

Jackie Hamby, Committee Assistant

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

No vote @ April 1st meeting. Sub-Sub Committee appointed

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

☐ Committee Substitute for
H.B. 272 A BILL TO BE ENTITLED AN ACT TO MAKE THE IN-STATE VIOLATION OF A CHILD CUSTODY ORDER A MISDEMEANOR.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

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

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

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

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

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

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

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

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

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

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

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

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

4-1-99
J-IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 272

Short Title: Child Custody Violation/Misdemeanor/AB. (Public)

Sponsors: Representatives Thomas; McCrary, Mosley, Barefoot, Bridgeman, Clary, Cox, Gardner, McLawhorn, Melton, Morris, Tucker, Wainwright, Warner, and Warren.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE THE IN-STATE VIOLATION OF A CHILD CUSTODY ORDER A MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-320.2. Transporting child inside the State with intent to violate custody order.**

(a) When any federal court or state court in the United States has awarded custody of a child under the age of 16 years, it is unlawful for any person to intentionally violate the court order by taking or transporting, or causing to be taken or transported, any such child from any point within this State to any other point within this State or to keep the child in violation of a court order within the limits of this State.

(b) Unless the conduct prohibited by this section is prohibited by some other provision of law providing for greater punishment, a violation of this section is a Class 1 misdemeanor. Keeping or transporting a child in violation of a court order for a period in excess of 72 hours is prima facie evidence that the person charged intended to violate the order at the time of taking."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

CJ-IV
4-1-99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H272-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 272
THIS IS A DRAFT 1-APR-99 09:45:50
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Child Custody Violation/Misdemeanor/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE THE IN-STATE VIOLATION OF A CHILD CUSTODY ORDER A MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-320.2. Keeping a child inside the State with intent to violate custody order.**

(a) When any federal court or state court in the United States has entered a valid custody order for a child under the age of 16 years, it is unlawful for any person to intentionally and without prior authorization from the custodial parent or other person having legal custody of the child to keep, take, or conceal the child within the limits of this State, in violation of a valid court order, for a period in excess of 48 hours. A person seeking to obtain a warrant under this section shall present the custody order to the magistrate for the magistrate's review and consideration prior to the issuance of the warrant.

(b) Unless the conduct prohibited by this section is prohibited by some other provision of law providing for greater punishment, a violation of this section is a Class 1 misdemeanor.

(c) It is a defense to a prosecution under this section that the defendant was acting in good faith to protect the safety or well-being of the child. The burden of proving this defense is on the defendant.

(c) Nothing in this section shall be construed to preclude the enforcement of a custody order pursuant to G.S. 50-13.3."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 272:
Child Custody Violation/Misdemeanor/AB

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Thomas
Date:	March 31, 1999	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 272 creates a Class 1 misdemeanor to intentionally keep, take, or conceal a child within the limits of this State, in violation of a court order, for a period in excess of 48 hours.

CURRENT LAW: Under current law, G.S. 14-320.1 provides that it is a Class I felony to take or transport a child within this State to any point **outside the limits of this State** in violation of a court order. There is no comparable statute for keeping a child **within the State** in violation of a court order.

BILL ANALYSIS: House Bill 272 creates G.S. 14-320.2 which makes it a Class 1 misdemeanor to keep, take, or conceal a child within the limits of this State for a period in excess of 48 hours in violation of a valid court order. A person seeking to obtain a warrant under the new statute must present the valid custody order to the magistrate prior to the issuance of the warrant. The bill explicitly provides a defense to prosecution if the defendant was acting in good faith to protect the safety or well being of the child.

A prosecution under this section does not prohibit the enforcement of a custody order by civil or criminal contempt pursuant to G.S. 50-13.3.

The bill becomes effective December 1, 1999.

Citation/Title
[redacted]ST § 14-320.1, Transporting child outside the State with intent to violate [redacted]tody order

*2757 G.S. § 14-320.1

WEST'S NORTH CAROLINA STATUTES
CHAPTER 14. CRIMINAL LAW
SUBCHAPTER XI. GENERAL POLICE REGULATIONS
ARTICLE 39. PROTECTION OF MINORS

Current through end of 1997 legislation

§ 14-320.1. Transporting child outside the State with intent to violate custody order

When any federal court or state court in the United States shall have awarded custody of a child under the age of 16 years, it shall be a felony for any person with the intent to violate the court order to take or transport, or cause to be taken or transported, any such child from any point within this State to any point outside the limits of this State or to keep any such child outside the limits of this State. Such crime shall be punishable as a Class I felony. Provided that keeping a child outside the limits of the State in violation of a court order for a period in excess of 72 hours shall be prima facie evidence that the person charged intended to violate the order at the time of taking.

Amended by Laws 1993, c. 539, § 1234, eff. Oct. 1, 1994; Laws 1994, Ex.Sess., c. 24, § 14(c), eff. March 26, 1994.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex.Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

Search this disc for cases citing this section.

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Citation/Title
NC ST § 14-41, Abduction of children

1973 G.S. § 14-41

WEST'S NORTH CAROLINA STATUTES
CHAPTER 14. CRIMINAL LAW
SUBCHAPTER III. OFFENSES AGAINST THE PERSON
ARTICLE 10. KIDNAPPING AND ABDUCTION

Current through end of 1997 legislation

§ 14-41. Abduction of children

(a) Any person who, without legal justification or defense, abducts or induces any minor child who is at least four years younger than the person to leave any person, agency, or institution lawfully entitled to the child's custody, placement, or care shall be guilty of a Class F felony.

(b) The provisions of this section shall not apply to any public officer or employee in the performance of his or her duty.

Amended by Laws 1993, c. 539, § 1144, eff. Oct. 1, 1994; Laws 1994, Ex.Sess., c. 24, § 14(c), eff. March 26, 1994; Laws 1995, c. 745, § 1, eff. Jan. 1, 1997.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex.Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

Laws 1995, c. 745, § 2, provides:

"This act becomes effective January 1, 1997, and applies to offenses committed on or after that date."

Laws 1995, c. 745, was ratified June 21, 1996.

Search this disc for cases citing this section.

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VISITOR REGISTRATION SHEET

Judiciary IV — April 1, 1999

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
AL DeHich	YAI/DOA
Karen Bass	YAI/DOA
Patricia Smith	Freedom Newspapers
George Millsaps	
Peg Dorer	Conference of D.A.s
Color Willoughby	Coference of DA's - 10th Dist
Jonathan Williams	CCPS

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

The House Committee on Judiciary IV met on Tuesday, April 6, 1999, in Room 421 LOB AT 10:00 a.m. The following members were present: Representative Baddour, Chairman; Representatives Haire and Thomas, Vice-Chairmen; Representatives Bowie, Decker, Earle, Jeffus, Mosley and Saunders. Esther Manheimer, Staff Attorney, was also present.

The Chairman called the meeting to order to consider the following bill:

HB 303 – Commercial Vehicle Safety/AB introduced by Representative Saunders. A proposed committee substitute was offered. Representative Jeffus moved to adopt the proposed committee substitute for discussion and motion carried. Esther Manheimer was recognized to explain the bill as it amends the laws relating to commercial vehicle safety. A summary of her explanation is attached as part of the minutes.

The Chair recognized Representative Decker who introduced Ms. Jennifer M. Tierney, member of Citizens for Reliable and Safe Highways (CRASH) who spoke in support of the bill. A statement of her remarks is attached as part of the minutes.

Also in attendance and speaking in support of the bill were Mr. Tom Crosby, AAA Carolina; Mr. E. L. Peters, President of North Carolina Truckers Association; and Secretary Norris Tolson. North Carolina Department of Transportation.

Captain George E. Gray, DMV Enforcement Officer was in attendance and answered questions of concern from members of the committee.

Representative Mosley moved to give proposed committee substitute for HB 303 a favorable report and unfavorable report to original bill. Motion carried.

The meeting adjourned at 10:45 a.m.

Respectfully submitted,

Representative Phillip A. Baddour, Jr.
Chairman

Barbara B. Poole,
Acting Committee Assistant

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 303 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS RELATING TO COMMERCIAL VEHICLE HIGHWAY 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.

☐ 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 BILL 303*

Short Title: Commercial Vehicle Safety/AB. (Public)

Sponsors: Representatives Saunders; Bridgeman, Cole, Cox, Dedmon, Goodwin, Hill, Insko, McLawhorn, Melton, Mosley, Russell, Smith, and Warren.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO COMMERCIAL VEHICLE HIGHWAY SAFETY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Commercial motor vehicle out-of-service fines authorized.**

The Commissioner may adopt fines for out-of-service criteria as defined in C.F.R. Part 390.5. These fines may not exceed the schedule of fines adopted by the Commercial Motor Vehicle Safety Alliance that is in effect on the date of the violations."

Section 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-169.1. Electronic monitor devices of traffic law enforcement authorized.**

The Department of Transportation may use electronic monitoring devices for the enforcement of traffic laws."

Section 3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.2C. Possession of alcoholic beverages while operating a commercial motor vehicle.**

A person commits the offense of operating a commercial motor vehicle while possessing alcoholic beverages if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d) upon any highway, any street , or any public vehicular

area within the State while having alcoholic beverages in the passenger area of the commercial vehicle."

Section 4. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who ~~drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under G.S. 20-141 is responsible for an infraction of~~ is convicted of or found to be responsible for "Speeding in a Highway Work Zone" ~~and~~ shall be required to pay a penalty of not less than one hundred dollars ($100.00), but not more than two hundred fifty dollars ($250.00). This penalty shall be imposed in addition to those penalties established in G.S. 20-141. A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

A law enforcement officer issuing a citation for speeding in a highway work zone shall indicate the vehicle speed and speed limit posed in the work zone. Upon an individual's conviction of speeding in a highway work zone, the clerk of court shall report the violation, the vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles."

Section 5. G.S. 20-309(a) reads as rewritten:

"(a) No ~~self-propelled~~ motor vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

An owner of a commercial motor vehicle, as defined in C.F.R. Part 390, shall have financial responsibility for the operation of the motor vehicle as required by this section. The financial responsibility for a commercial motor vehicle shall be equal to that required in C.F.R. 387.3, 387.5, 387.7, and 387.11 for for-hire or private motor vehicles transporting property in interstate or intrastate commerce."

Section 6. G.S. 20-140.3 reads as rewritten:

"§ 20-140.3. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access highways, it shall be unlawful for any person:

(1) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line on said highways.

(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, separation section, or line on said highways.

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

(4) To drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.

(5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or at designated parking areas.

(6) To fail to yield the right-of-way when entering the highway to any vehicle already travelling on the highway.

(7) Notwithstanding any other subdivision of this section, a ~~member of the State Highway Patrol~~ law enforcement officer may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the ~~patrol member~~ officer has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose."

Section 7. G.S. 136-89.56 reads as rewritten:

"§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access facilities it shall be unlawful for any person:

(1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.

(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

(4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the Department of Transportation.

(5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or as designated parking areas.

(6) To willfully damage, remove, climb, cross or breach any fence erected within the rights-of-way of said highways.

~~(7) Notwithstanding any other subdivision of this section, a member of the State Highway Patrol may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the patrol member has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose.~~

Any person who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor."

Section 8. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3

Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus	8
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4
Running through red light	4
No driver's license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4
Failure to report accident where such report is required	4
Speeding in a school zone in excess of the posted school zone speed limit	4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle	4
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking

Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Public drunk within a vehicle
Possession of alcoholic beverages
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 9. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-16A. Double fines for offenses committed while operating a commercial vehicle.**

Any infraction or misdemeanor committed while operating a commercial motor vehicle shall be assessed double the amount of any fine required by statute."

Section 10. This act becomes effective December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 303*
Proposed Committee Substitute H303-PCS4168-SK

Short Title: Commercial Vehicle Safety/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO COMMERCIAL VEHICLE HIGHWAY SAFETY AND WORK ZONE SAFETY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Commercial motor vehicle out-of-service fines authorized.**

The Commissioner may adopt rules implementing fines for violation of out-of-service criteria as defined in 49 C.F.R. § 390.5. These fines may not exceed the schedule of fines adopted by the Commercial Motor Vehicle Safety Alliance that is in effect on the date of the violations."

Section 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.2C. Possession of alcoholic beverages while operating a commercial motor vehicle.**

A person commits the offense of operating a commercial motor vehicle while possessing alcoholic beverages if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d), upon any highway, any street, or any public vehicular area within the State while having alcoholic beverages in the passenger area of the commercial vehicle."

Section 3. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under ~~G.S. 20-141 is responsible for an~~

~~infraction of "Speeding in a Highway Work Zone" and~~ this section shall be required to pay a penalty of ~~not less than one hundred dollars ($100.00), but not more than~~ two hundred fifty dollars ($250.00). This penalty shall be imposed in addition to those penalties established in this Chapter. A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

A law enforcement officer issuing a citation for a violation of this section while in a highway work zone shall indicate the vehicle speed and speed limit posted in the work zone. Upon an individual's conviction of a violation of this section while in a highway work zone, the clerk of court shall report that the vehicle was in a work zone at the time of the violation, the vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles."

Section 4. G.S. 20-309(a) reads as rewritten:

"(a) No ~~self-propelled~~ motor vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

An owner of a commercial motor vehicle, as defined in 49 C.F.R. Part 390, shall have financial responsibility for the operation of the motor vehicle as required by this section. The financial responsibility for a commercial motor vehicle shall be equal to that required in 49 C.F.R. §§ 387.3, 387.5, 387.7, and 387.11 for for-hire or private motor vehicles transporting property in interstate or intrastate commerce."

Section 5. G.S. 20-140.3 reads as rewritten:

"§ 20-140.3. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access highways, it shall be unlawful for any person:

(1) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line on said highways.

(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, separation section, or line on said highways.

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

(4) To drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.

(5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or at designated parking areas.

(6) To fail to yield the right-of-way when entering the highway to any vehicle already travelling on the highway.

(7) Notwithstanding any other subdivision of this section, a ~~member of the State Highway Patrol~~ law enforcement officer may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the ~~patrol member~~ officer has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose."

Section 6. G.S. 136-89.58 reads as rewritten:

"**§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.**

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access facilities it shall be unlawful for any person:

(1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.

(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

(4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the Department of Transportation.

(5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or as designated parking areas.

(6) To willfully damage, remove, climb, cross or breach any fence erected within the rights-of-way of said highways.

~~(7) Notwithstanding any other subdivision of this section, a member of the State Highway Patrol may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the patrol member has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose.~~

Any person who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor."

Section 7. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3

All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus	8
Rail-highway crossing violation	6
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4
Running through red light	4
No driver's license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4
Failure to report accident where such report is required	4
Speeding in a school zone in excess of the posted school zone speed limit	4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle	4
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon

Improper plates
Improper registration
Improper muffler
~~Public drunk within a vehicle~~
~~Possession of alcoholic beverages~~
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 8. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-16A. Double penalties for offenses committed while operating a commercial motor vehicle.**

Any infraction or misdemeanor committed in violation of Chapter 20 while operating a commercial motor vehicle may be assessed double the amount of any fine or penalty authorized by statute."

Section 9. This act becomes effective December 1, 1999, and applies to violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 303*
Proposed Committee Substitute: H303-PCSSK-001
Attention: line numbers may change after adoption.

Short Title: Commercial Vehicle Safety/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO COMMERCIAL VEHICLE HIGHWAY SAFETY AND WORK ZONE SAFETY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Commercial motor vehicle out-of-service fines authorized.**

The Commissioner may adopt rules implementing fines for violation of out-of-service criteria as defined in 49 C.F.R. Part 390.5. These fines may not exceed the schedule of fines adopted by the Commercial Motor Vehicle Safety Alliance that is in effect on the date of the violations."

Section 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.2C. Possession of alcoholic beverages while operating a commercial motor vehicle.**

A person commits the offense of operating a commercial motor vehicle while possessing alcoholic beverages if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d) upon any highway, any street, or any public vehicular area within the State while having alcoholic beverages in the passenger area of the commercial vehicle."

Section 3. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under ~~G.S. 20-141 is responsible for an infraction of "Speeding in a Highway Work Zone" and~~ this section shall be required to pay a penalty of ~~not less than one hundred dollars ($100.00), but not more than~~ two hundred fifty dollars ($250.00). This penalty shall be imposed in addition to those penalties established in this Chapter. A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

A law enforcement officer issuing a citation for a violation of this section while in a highway work zone shall indicate the vehicle speed and speed limit posted in the work zone. Upon an individual's conviction of a violation of this section while in a highway work zone, the clerk of court shall report that the vehicle was in a work zone at the time of the violation, the vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles."

Section 4. G.S. 20-309(a) reads as rewritten:

"(a) No ~~self-propelled~~ motor vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

An owner of a commercial motor vehicle, as defined in 49 C.F.R. Part 390, shall have financial responsibility for the operation of the motor vehicle as required by this section. The financial responsibility for a commercial motor vehicle shall be equal to that required in 49 C.F.R. 387.3, 387.5, 387.7, and 387.11 for for-hire or private motor vehicles transporting property in interstate or intrastate commerce."

Section 5. G.S. 20-140.3 reads as rewritten:

"**§ 20-140.3. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.**

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access highways, it shall be unlawful for any person:

(1) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line on said highways.

(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, separation section, or line on said highways.

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

(4) To drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.

(5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or at designated parking areas.

(6) To fail to yield the right-of-way when entering the highway to any vehicle already travelling on the highway.

(7) Notwithstanding any other subdivision of this section, a ~~member of the State Highway Patrol~~ law enforcement officer may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the ~~patrol member~~ officer has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose."

Section 6. G.S. 136-89.56 reads as rewritten:

"**§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.**

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access facilities it shall be unlawful for any person:

(1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.
(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.
(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.
(4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the Department of Transportation.
(5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or as designated parking areas.
(6) To willfully damage, remove, climb, cross or breach any fence erected within the rights-of-way of said highways.
~~(7) Notwithstanding any other subdivision of this section, a member of the State Highway Patrol may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the patrol member has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose.~~

Any person who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor."

Section 7. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the

offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

<u>Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle</u>

<u>Passing stopped school bus</u>	<u>8</u>
<u>Rail-highway crossing violation</u>	<u>6</u>
<u>Reckless driving</u>	<u>5</u>
<u>Hit and run, property damage only</u>	<u>5</u>

Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4
Running through red light	4
No driver's license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4
Failure to report accident where such report is required	4
Speeding in a school zone in excess of the posted school zone speed limit	4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle	4
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
~~Public drunk within a vehicle~~
~~Possession of alcoholic beverages~~
Improper display of license plates or dealers' tags

Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 8. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-16A. Double penalties for offenses committed while operating a motor commercial vehicle.

Any infraction or misdemeanor committed in violation of Chapter 20 while operating a commercial motor vehicle may be assessed double the amount of any fine or penalty authorized by statute."

Section 9. This act applies to violations occurring on or after December 1, 1999.

HOUSE BILL 303:
Commercial Vehicle Safety/AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Representative Saunders
Date:	April 6, 1999	**Summary by:**	Esther Manheimer
Version:	H303-PCSSK-001 (Committee Substitute)		Committee Counsel

SUMMARY: *House Bill 303 amends the laws relating to commercial vehicle safety so as to provide for fines for out-of-service violations, define the offense of possession of alcoholic beverages while operating a commercial motor vehicle, require $750,000 of liability insurance for all commercial motor vehicles, increase the points violations for commercial motor vehicles, and double the penalties for offenses committed by drivers of commercial motor vehicles. In addition, HB 303 allows the Department of Transportation to charge individuals speeding in a work zone with speeding and assess a penalty of $250 against the speeder. Finally, the bill allows all law enforcement officers to cross the median of a divided highway in certain situations.*

BILL ANALYSIS:

Out-of-Service Fines.

Section 1. Amends Chapter 20 by adding a new section, G.S. 20-17.7. **Commercial Motor Vehicle Out-of-Service Fines Authorized.** Under current law, the Department of Transportation (the Department) can place a commercial motor vehicle "out-of-service" when the vehicle is found to be in violation of any of a number of various criteria, but there is no fine that accompanies the violation. HB 303 would allow the Department to impose a fine for a violation of the out-of-service criteria.

Possession of Alcohol.

Section 2. Amends Chapter 20 by adding a new section, G.S. 20-138.2C. **Possession of alcoholic beverages while operating a commercial motor vehicle.** This section conforms North Carolina law to the federal law regarding alcohol possession. A person commits the offense of operating a commercial motor vehicle while possessing alcoholic beverages if the person drives a commercial motor vehicle while having alcoholic beverages in the passenger area of the commercial vehicle.

Speeding in a Highway Work Zone.

Section 3. Amends G.S. 20-141(j2). Under current law, a person who speeds in a highway work zone is either charged with speeding (which carries a drivers license points assessment) or with speeding in a highway work zone (which carries no drivers license points assessment but carries a penalty of $100-$250). HB 303 would allow the Department to charge a person speeding in a work zone with speeding (with the points vioaltion) and require the speeder to pay a fine of $250 in addition to the fines associated with speeding.

Commercial Vehicle Insurance Requirements.
Section 4. Amends G.S. 20-309(a) to require that all commercial motor vehicles operating in North Carolina have a minimum level of financial responsibility (insurance). HB 303 would require all **commercial vehicles operating in the State to have $750,000 of liability insurance.**

Crossing the Median of a Divided Highway.
Sections 5 and 6. Amends G.S. 20-140.3 and G.S. 136-89.56 to allow all law enforcement officers to cross the median of a divided highway. Under current law, this right is limited to members of the State Highway Patrol.

Schedule of Point Values for Violations while Operating a Commercial Motor Vehicle.
Section 7. Amends G.S. 20-16(c). Under current law, the Division of Motor Vehicles assigns the same number of drivers license points to the license of violators of the motor vehicle laws without distinguishing between drivers who were operating a commercial motor vehicle at the time of the offense and those who were not. HB 303 would require the Division of Motor Vehicles to assign a higher number of points for all offenses but littering to the license of a driver that commits the violation while operating a commercial motor vehicle.

In addition, illegally crossing railroad tracks in a commercial motor vehicle is a drivers license points violation (6 points).

Under current law, there are certain offenses for which no points are assessed against an offender's license. The bill deletes from this list the following: public drunk within a vehicle (the offense of "public drunk" no longer exists), and possession of alcoholic beverages (this is now a points offense).

Penalties Doubled for Offenses Committed While Operating a Commercial Motor Vehicle.
Section 8. Amends Chapter 20 by adding a new section, G.S. 20-16A. Any infraction or misdemeanor committed in violation of Chapter 20 while operating a commercial motor vehicle may be assessed double the amount of any penalty required by statute.

Effective Date: (Section 9.) This act applies to violations occurring on or after December 1, 1999.

Before The North Carolina House Of Representatives

Judiciary 4 Committee

Hearing On House Bill 303
Commercial Vehicle Safety

STATEMENT OF
CITIZENS FOR RELIABLE AND SAFE HIGHWAYS

(CRASH)

JENNIFER MOONEY TIERNEY
CRASH BOARD MEMBER & SURVIVORS NETWORK VOLUNTEER

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April 6,1999
Raleigh, NC

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit this testimony concerning House Bill 303.

The trucking industry in North Carolina is plagued by numerous safety problems. Oversize and overweight trucks, truck driver fatigue, substandard vehicle maintenance, weak trucking regulations and penalties, lack of a third party inspection program and insufficient regulatory enforcement are all obstacles to safe trucking operations. The trucking industry consistently places productivity concerns over issues of safety. But we feel that the NC General Assembly, the NC Department of Transportation and the trucking interests have a shared responsibility to truck drivers and to the motoring public to make safety a top priority. Safety must be an integral part of trucking operations, and it is our goal to ensure that safety is the highest priority and that it does not take a back seat to economic efficiency and productivity.

According to fatality statistics recently released by the National Highway Traffic Safety Administration (NHTSA), 5,355 people died in over 444,000 truck related crashes in 1997; 133,000 more were injured, 26,000 suffering severe brain damage or loss of a limb. According to these same statistics NC ranks 5th in the nation for the most truck related fatalities, 2nd in the nation for the most children killed in truck related crashes and 8th in the nation for the most truck drivers killed. Therefore, trucking is North Carolina's most dangerous commercial enterprise and the most dangerous commercial enterprise threatening our children. Trucking is North Carolina's most dangerous profession.

Citizens for Reliable and Safe Highway's (CRASH), formed in 1990, is a nationwide, grassroots non-profit organization dedicated to improving overall truck safety in the US and eliminating the unnecessary deaths and injuries caused by truck crashes every year. We represents the millions of Americans who travel the nation's highways every day, including truck drivers, motorists, truck crash victims, and their families. Our goal is to make safety as important as productivity in all US trucking operations.

I am a CRASH Board Member and a member of the CRASH Survivors Network. That means I can personally attest to the fact that commercial truck safety is a life and death issue that affects real people and real families. My father, Jim Mooney, a life long resident of North Carolina was killed September 20,1983 in a crash with an large truck. This is my Daddy. There are no words passionate or eloquent enough to express my love for him. My family was devastated by the preventable crash that took his life. It is in his memory that I have dedicated my life to preventing this tragedy from happening to others. My position on the CRASH Board is volunteer.

The trucking industry's safety record continues to deteriorate with a 26% increase in truck related fatalities from 1996 to 1997. North Carolina consistently ranks among the 10 states with the highest number of deaths in truck related crashes

A 10 month investigation by the Winston-Salem Journal published 14 months ago found:

- North Carolina has more trucking companies with "unsatisfactory" safety ratings from federal inspectors than any other state, even those with more trucking companies. Nearly all of the companies receiving the bad rating have continued to operate, some for as long as 15 years and some without ever correcting the violations.
- Only 49 % of all trucking companies in the state have been inspected and have any rating at all, and more than half of those received "unsatisfactory" or "conditional" ratings-- meaning they have violations that have or could have caused wrecks involving their trucks.
- Many dangerous trucks escape the NC Division of Motor Vehicles' scrutiny because the agency lacks the staff to adequately enforce trucking laws. Over the years, the DMV has been given more duties, so the number of trucks that it inspects has steadily decreased.
- An estimated 1.2 million of the 1.6 million trucks registered in North Carolina are barely regulated at all because of a gap between federal and state trucking regulations.
- North Carolina allows trucking companies and drivers to inspect their own trucks and trailers, and the state doesn't routinely check to see whether the inspections were done properly or even at all.
- North Carolina is known to be "the easy" by truckers because it is so easy to run illegal in our state and even if they get caught the fines and penalties are so weak it's just considered the cost of doing business.

This industry has a great track record for getting what it wants. The victims and survivors of truck crashes in our state say enough. In recent years, despite increasing fatalities, state legislators have, opened more small roads to large truck traffic, eased weight limits for trucks on smaller roads, reduced fines for trucks that exceed weight limits and passed about three-fourths of the bills the NC Trucking Association has supported in the last five years. North Carolina is known to be a very politically friendly state to trucking. Several legislators, including some members of the House and Senate transportation committees, have ties to the trucking industry or industries that rely on trucks. Governor Hunt appointed the president, Elbert Peters, of The NC Trucking association to chair the Governors Highway Safety Commission. This is clearly a major conflict of interest. This would be akin to appointing the ABC Commissioner to chair a DWI and highway safety committee.

These facts have fueled frustration and heartache for the families of loved ones killed and injured in truck crashes in our state. On their behalf I ask you to please support this truck safety legislation. More than half of the states in our great nation have adopted the Commercial Vehicle Safety Alliance (CVSA) fine schedule for commercial vehicles that operate in an unsafe manner. For NC to adopt the same would be a deterrent for future violations. For example, the recommended maximum fine for falsifying a logbook is $300. But in NC, a driver who falsifies a logbook can't be fined at all because state laws and regulations don't call for it. Falsifying a logbook is very serious in that as much as 40% of all truck crashes are caused by fatigue.

To increase the minimum fine for speeding in a work zone to $250 in addition to current penalties for speeding would address the many work zone crashes we have had here in

NC. The worst truck crash in NC history occurred in a work zone in Durham and killed 9 people and injured 16 others. The South Carolina Trucking Association is currently asking for state legislation that would fine a truck driver with a Commercial Drivers License $1,000 for speeding 5 miles over the posted limit. They clearly recognize the dangers of speeding.

To allow DOT to use electronic monitoring devices will only enhance their ability to enforce our state laws. We send our State Highway Patrol officers into the field to catch drunk drivers but to not allow them to use a breathalyzer is irresponsible Our DMV officers should have access to what ever is available to increase enforcement.

The trucking industry will argue that the numbers of crashes ,deaths and injuries are up because the traffic is up. They say the fatality rate per vehicle miles traveled is down so they're proud of the job they're doing of making the highways safer. A 26% increase in deaths and a higher than the national average for truck crash fatalities is nothing to be proud of. If the airline industry were regulated on a state level the government and the people of NC would never accept the argument that these crashes were acceptable because air traffic was up or that these crashes are acceptable because it facilitates a more profitable and efficient aviation industry. Yet these are the arguments used by some trucking interest against rules which would improve safety of commercial trucking.

The facts are clear, large trucks are only three percent of the national vehicle fleet but are involved in 13% of all passenger vehicle deaths. When large trucks collide with smaller vehicles, 98% of the people who die are occupants of the car. Large trucks have a fatality rate of 2.7 deaths per 100 million miles traveled, compared to all motor vehicle fatalities of 1.7 deaths per 100 million miles traveled.

Finally, the erroneous debunked claim that passenger vehicle drivers are responsible for more than two-thirds percent of car-large truck crashes is a statement the national trucking lobby takes every opportunity to broad-cast in an effort to dodge industry responsibility. They arrive at this number by use of the "driver factors" from the National Highway Traffic Safety Administration's Fatal Accounting Reporting System (FARS) data base. This is either a deliberate attempt to mislead people by claiming that most crashes involving big rigs are caused by car drivers, or they are simply ignorant of the way FARS data is collected. "Driver factors" cannot be equated with fault. Indeed, the Office of Motor Carriers says clearly in the May 1996 issue of it's official publication, *McSafe*, that, "None of the available data addresses crash contributing factors, causation, or fault."

If this truck safety bill is not passed North Carolina will see more carnage on our highways. Can we afford another year with a 26% increase in truck related deaths? For those families who have paid the ultimate price we implore you to vote for this bill. We thank you and look forward to working with you.

VISITOR REGISTRATION SHEET

Judiciary IV — April 6,1999

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Janice Faulkner	DMV - Commissioner
Lisa J. Cole	DMV
J. Edwards	DMV Enf.
[illegible]	DMV - Commissioner's Office
David C. Richards	DMV Enf.
GEORGE GRAY	DMV Enf.
BERRY JENKINS	Carolinas AGC
TONY WYATT	NCDOT - TRAFFIC ENGINEERING
Beth Evans	Federal Highway Administration
V L McBride	NCTA
E. L. Peters	NCTA
Lyman Cooper	CSX CORP.
Cam Cover	BPMHL.
Mike Dunn	NCSHAA/FLCD
David Anders	PFFPNC

VISITOR REGISTRATION SHEET

Industry IV
Name of Committee

4-6-99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jane Pinsley	for AAA Carolinas
Tom Crosby	AAA Carolinas
DUANE MACENTEE	NCDOT
PB Simmons	NCDOT-Rail
ROBERTO CANALES	NCDOT
B. H Jones	NCDOT
Q Roy	NCDOT
Frank Gray	N.C. Manufactured Housing
Chris Sinclair	NC MHI
angel Harris	DOT

AGENDA

HOUSE JUDICIARY IV COMMITTEE

April 8, 1999
Room 421 LOB
10:00 AM

CALL TO ORDER

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Tim Hovis
Esther Manheimer
Jackie Hamby (Committee Assistant)

BILLS TO BE CONSIDERED:

HB 304 Child Care Subsidy Fraud/Ab
Sponsor: Representative Earle

HB 426 High Point Red Light Cameras
Sponsor: Representative Jarrell

HB 514 Huntersville Photo Enforcement
Sponsor: Representative Saunders

HB 572 Greenville Red Light Cameras
Sponsor: Representative Edwards

HB 604 Clarify Atty-In-Fact Gifts
Sponsor: Representative Thomas

HB 786 Commercial Felony Death By Vehicle
Sponsor: Representative Haire

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

APRIL 8, 1999

The House Committee on JUDICIARY IV met Thursday, April 8, 1999 at 10:00 a.m. in Room 421 of the Legislative Office Building. Chairman Baddour presided. The other members present were: Representative(s) Haire, Vice Chairman; Thomas, Vice Chairman; Bowie, Jeffus, McMahan, Pope, and Cunningham. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet is attached for the record

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 604 A BILL ENTITLED AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS. HB 604 was explained by Representative Thomas. Staff's summary of HB 604 is attached. Representative Culpepper was recognized to make a motion for a favorable report of HB 604 and the motion carried.

HB 304 A BILL TO BE ENTILED AN ACT TO PROVIDE CRIMINAL PENALTIES FOR FRAUDULENT MISREPRESENTATION INVOLVING CHILD CARE SUBSIDIES AND TO PROVIDE COUNTIES A FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE FRAUD IN CHILD CARE PAYMENTS. Representative Earle explained the bill and offered a proposed House Committee Substitute for HB 304. Representative Mosley moved for its adoption for the purpose of discussion and the motion carried. The staff summary of the proposed committee substitute for the 2nd edition engrossed HB 304 is attached for reference. Representative McMahan moved for a favorable report of the Committee Substitute for HB 304, unfavorable to the original bill, and the motion carried.

The following three bills* ,sponsored by Representative(s) Jarrell, Edwards and Saunders, were all given a favorable report upon motion by Representative Mosley. The motion carried. Sponsors were given an opportunity to explain their bill and a staff summary is attached.:

***HB 426 A BILL ENTITLED AN ACT TO AUTHORIZE THE CITY OF HIGH POINT TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.** Representative Jarrell - Sponsor.

***HB 514 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.** Representative Saunders – Sponsor.

***HB 572 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF GREENVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.** Representative Edwards - Sponsor.

HB 786 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE. Representative Haire, Sponsor, explained the bill and stated that a fiscal note was being prepared. A staff summary is attached. Representative Saunders asked if DOT or the Truckers' Association opposed the bill, and have they been included in discussion of it. A representative of the Department of Motor Vehicles stated that DOV was not opposed, and Mr.Mike Oken of the Truckers' Association was also recognized to state their support of HB 786. Chairman Baddour announced that there would be no vote on HB 786 at this time.

The meeting adjourned at 10:50 a.m.

Representative Phil Baddour, Chairman

Jackie Hamby, Committee Assistant

ATTACHMENTS:
Staff Summaries
Visitor Registration Sheet

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 604 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ 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 604

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors: Representative Thomas.

Referred to: Judiciary IV.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by

the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act becomes effective July 1, 1999, and applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1999, and applies to all powers of attorney executed on or after that date. Section 3 of this act is effective when it becomes law.

HOUSE BILL 604:
Clarify Atty-In-Fact Gifts

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Thomas
Date:	April 8, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 604 clarifies that the attorney-in-fact named in a short form power of attorney may make gifts in favor of himself or herself if such gifts are expressly authorized by the power of attorney. The bill also clarifies that gifts by the attorney-in-fact to the attorney-in-fact must be made in accordance with the principal's history of making or joining in the making of gifts.***

BACKGROUND: Article 1 of Chapter 32, *Statutory Short Form Power of Attorney*, provides a form to be used when creating a short form power of attorney and describes the various powers which may be conferred by the short form, including the power of the attorney-in-fact to make gifts. G.S. 32A-2(14) provides that an attorney-in-fact may make gifts to charities and to individuals other than the attorney-in-fact. This subsection specifically prohibits the attorney-in-fact from exercising this power in favor of himself or herself. However, G.S. 32A-2(15) specifically provides that an attorney-in-fact may make gifts to himself or herself. If both powers are included on the statutory short form by the principal, a conflict arises.

BILL ANALYSIS: Section 1 of House Bill 606 amends G.S. 32A-2(14) to clarify that, despite the prohibition contained in this subsection, the attorney-in-fact may make gifts in favor of himself or herself if specifically authorized by the power of attorney to do so pursuant to G.S. 32A-2(15).

Section 2 amends G.S. 32A-2(15) to clarify that gifts by the attorney-in-fact to the attorney-in-fact must be made in accordance with the principal's personal history of making or joining in the making of lifetime gifts. This language is consistent with the power of the attorney-in fact to make gifts to individuals and charities in G.S. 32A-2(14).

Section 1 of this act becomes effective July 1, 1999 and applies to all powers of attorneys executed on or after October 1, 1995. By making the language retroactive, this bill corrects any conflicts in existing short form powers of attorney. Section 2 becomes effective October 1, 1999 and applies to all powers of attorney executed on or after that date.

§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in G.S. 32A-1.

The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following powers on the attorney-in-fact named therein:

(1) Real Property Transactions. - To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgage, subject to deeds of trust, and in any way or manner deal with all or any part of any interest in real property whatsoever, that the principal owns at the time of execution or may thereafter acquire, for under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.

(2) Personal Property Transactions. - To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens and mortgages, and hypothecate, and in any way or manner deal with all or any part of any personal property whatsoever, tangible or intangible, or any interest therein, that the principal owns at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.

(3) Bond, Share, Stock, Securities and Commodity Transactions. - To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

(4) Banking Transaction. - To make, receive, sign, endorse, execute, acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of, banks, savings and loan or other institutions or associations for the principal.

(5) Safe Deposits. - To have free access at any time or times to any safe deposit box or vault to which the principal might have access as lessee or owner.

(6) Business Operating Transactions. - To conduct, engage in, and transact any and all lawful business of whatever nature or kind for the principal.

(7) Insurance Transactions. - To exercise or perform any act, power, duty, right or obligation whatsoever in regard to any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to execution; and to procure new, different or additional contracts of insurance for the principal and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal.

(8) Estate Transactions. - To request, ask, demand, sue for, recover, collect, receive, and hold and possess all legacies, bequests, devises, as are, owned by, or due, owing, payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

(9) Personal Relationships and Affairs. - To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization, or to continue contributions thereto.

In the event the attorney-in-fact named pursuant to G.S. 32A-1 makes a decision regarding the health care of the principal that is contradictory to a decision made by a health care agent appointed pursuant to Article 3 of this Chapter, the decision of the health care agent shall overrule the decision of the attorney-in-fact.

(10) Social Security and Unemployment. - To prepare, execute and file all social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government.

(11) Benefits from Military Service. - To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or subdivision thereof, to the principal, arising from or based upon military service and to receive, to endorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or

other fiscal officer or depository of the United States or subdivision thereof; to take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose; to prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after execution.

(12) Tax matters. - To prepare, execute, verify and file in the name of the principal and on behalf of the principal any and all types of tax returns, amended returns, declaration of estimated tax, report, protest, application for correction of assessed valuation of real or other property, appeal, brief, claim for refund, or petition, including petition to the Tax Court of the United States, in connection with any tax imposed or proposed to be imposed by any government, or claimed, levied or assessed by any government, and to pay any such tax and to obtain any extension of time for any of the foregoing; to execute waivers or consents agreeing to a later determination and assessment of taxes than is provided by any statute of limitations; to execute waivers of restriction on the assessment and collection of deficiency in any tax; to execute closing agreements and all other documents, instruments and papers relating to any tax liability of any sort; to institute and carry on through counsel any proceeding in connection with determining or contesting any such tax or to recover any tax paid or to resist any claim for additional tax on any proposed assessment or levy thereof; and to enter into any agreements or stipulations for compromise or other adjustments or disposition of any tax.

(13) Employment of Agents. - To employ agents such as legal counsel, accountants or other professional representation as may be appropriate and to grant such agents such powers of attorney or other appropriate authorization as may be required in connection with such representation or by the Internal Revenue Service or other governmental authority.

(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. -

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact

or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal.

(15) Gifts to the Named Attorney-In-Fact. - To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the attorney-in-fact.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 304 A BILL TO BE ENTITLED AN ACT TO PROVIDE CRIMINAL PENALTIES FOR FRAUDULENT MISREPRESENTATION INVOLVING CHILD CARE SUBSIDIES AND TO PROVIDE COUNTIES A FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE FRAUD IN CHILD CARE PAYMENTS.

☐ 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.

☐ 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 2

HOUSE BILL 304
Second Edition Engrossed 4/5/99

Short Title: Child Care Subsidy Fraud/AB. (Public)

Sponsors: Representatives Earle; Gardner and Wainwright.

Referred to: Children, Youth and Families.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR FRAUDULENT MISREPRESENTATION INVOLVING CHILD CARE SUBSIDIES AND TO PROVIDE COUNTIES A FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE FRAUD IN CHILD CARE PAYMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-107. Fraudulent misrepresentation.**

(a) A person, whether a provider or recipient of child care subsidies or someone claiming to be a provider or recipient of child care subsidies, commits the offense of fraudulent misrepresentation when both of the following occur:

(1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact.

(2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) If the child care subsidy is in the amount of four hundred dollars ($400.00) or less, the person is guilty of a Class 1 misdemeanor. If the child care subsidy is in the amount of more than four hundred dollars ($400.00), the person is guilty of a Class I felony.

(c) As used in this section:

(1) 'Child care subsidy' means the use of public funds to pay for day care services for children of needy families.

(2) 'Person' means an individual, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

Section 2. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-108. Financial incentives for counties to investigate and pursue alleged child care fraud.**

The Department of Health and Human Services shall allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment claims collected by the local purchasing agency. Incentive bonuses under this section shall be used by the agency for the purchase of subsidized child care or to enhance and improve program integrity. The agency shall use at least seventy-five percent (75%) of the incentive bonus funds under this section for the purchase of subsidized child care. The agency shall not use more than twenty-five percent (25%) of the incentive bonus funds under this section for program integrity. On or before October 1 each year, each agency shall report to the Department of Health and Human Services on the use of the incentive bonuses under this section during the previous fiscal year. This section does not apply to overpayments due to administrative errors of local purchasing agency staff."

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 becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 304
Second Edition Engrossed 4/5/99
Proposed Committee Substitute H304-PCS7149-SK

Short Title: Child Care Subsidy Fraud/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR FRAUDULENT MISREPRESENTATION INVOLVING CHILD CARE SUBSIDIES AND TO PROVIDE COUNTIES A FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE FRAUD IN CHILD CARE PAYMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-107. Fraudulent misrepresentation.**

(a) A person, whether a provider or recipient of child care subsidies or someone claiming to be a provider or recipient of child care subsidies, commits the offense of fraudulent misrepresentation when both of the following occur:

(1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact.

(2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) If the child care subsidy is not more than one thousand dollars ($1,000), the person is guilty of a Class 1 misdemeanor. If the child care subsidy is more than one thousand dollars ($1,000), the person is guilty of a Class I felony.

(c) As used in this section:

(1) 'Child care subsidy' means the use of public funds to pay for day care services for children.

(2) 'Person' means an individual, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

Section 2. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-108. Financial incentives for counties to investigate and pursue alleged child care fraud.**

The Department of Health and Human Services shall allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment claims collected by the local purchasing agency. Incentive bonuses under this section shall be used by the agency for the purchase of subsidized child care or to enhance and improve program integrity. The agency shall use at least seventy-five percent (75%) of the incentive bonus funds under this section for the purchase of subsidized child care. The agency shall not use more than twenty-five percent (25%) of the incentive bonus funds under this section for program integrity. On or before October 1 each year, each agency shall report to the Department of Health and Human Services on the use of the incentive bonuses under this section during the previous fiscal year. This section does not apply to overpayments due to administrative errors of local purchasing agency staff."

Section 3. G.S. 108A-39 reads as rewritten:

"**§ 108A-39. Fraudulent misrepresentation.**

(a) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in the amount of not more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000) is guilty of a Class 1 misdemeanor.

(b) Any person, whether provider or recipient, or person representing himself as such who willfully and knowingly with the intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact, obtains for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in an amount of more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000) is guilty of a Class I felony.

(c) As used in this section the word "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

Section 4. G.S. 108A-53 reads as rewritten:

"**§ 108A-53. Fraudulent misrepresentation.**

(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which that person is not entitled in the amount of ~~four hundred dollars ($400.00) or less~~ not more than one thousand dollars ($1,000) shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in an amount more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000) shall be guilty of a Class I felony.

(b) Whoever presents, or causes to be presented, food stamps or authorization cards for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Part or the regulations issued pursuant to this Part shall be guilty of a Class 1 misdemeanor.

(c) Whoever receives any food stamps for any consumable item knowing that such food stamps were procured fraudulently under subsections (a) and/or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Whoever receives any food stamps for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a Class 1 misdemeanor."

Section 5. G.S. 108A-64 reads as rewritten:

"**§ 108A-64. Medical assistance recipient fraud.**

(a) It shall be unlawful for any person to knowingly and willfully and with intent to defraud make or cause to be made a false statement or representation of a material fact in an application for assistance under this Part, or intended for use in determining entitlement to such assistance.

(b) It shall be unlawful for any applicant, recipient or person acting on behalf of such applicant or recipient to knowingly and willfully and with intent to defraud, conceal or fail to disclose any condition, fact or event affecting such applicant's or recipient's initial or continued entitlement to receive assistance under this Part.

(b1) It is unlawful for any person knowingly, willingly, and with intent to defraud, to obtain or attempt to obtain, or to assist, aid, or abet another person, either directly or indirectly, to obtain money, services, or any other thing of value to which the person is not entitled as a recipient under this Part, or otherwise to deliberately misuse a Medicaid identification card. This misuse includes the sale, alteration, or lending of the Medicaid identification card to others for services and the use of the card by someone other than the recipient to receive or attempt to receive Medicaid program coverage for services rendered to that individual.

Proof of intent to defraud does not require proof of intent to defraud any particular person.

(c) (1) A person who violates a provision of this section shall be guilty of a Class I felony if the value of the assistance wrongfully obtained is more than ~~four hundred dollars ($400.00).~~ one thousand dollars ($1,000).

(2) A person who violates a provision of this section shall be guilty of a Class 1 misdemeanor if the value of the assistance wrongfully obtained is ~~four hundred dollars ($400.00) or less.~~ not more than one thousand dollars ($1,000).

(d) For purposes of this section the word "person" includes any natural person, association, consortium, corporation, body politic, partnership, or other group, entity or organization."

Section 6. Sections 1, 3, 4, and 5 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 July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 304
Second Edition Engrossed 4/5/99
Proposed Committee Substitute: H304-PCSSK-001
Attention: line numbers may change after adoption.

Short Title: Child Care Subsidy Fraud/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR FRAUDULENT MISREPRESENTATION INVOLVING CHILD CARE SUBSIDIES AND TO PROVIDE COUNTIES A FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE FRAUD IN CHILD CARE PAYMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 110-107. Fraudulent misrepresentation.

(a) A person, whether a provider or recipient of child care subsidies or someone claiming to be a provider or recipient of child care subsidies, commits the offense of fraudulent misrepresentation when both of the following occur:

(1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact.

(2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to

receive a child care subsidy for himself or herself or for another person.

(b) If the child care subsidy is not more than one thousand dollars ($1,000.00), the person is guilty of a Class 1 misdemeanor. If the child care subsidy is more than one thousand dollars ($1,000.00), the person is guilty of a Class I felony.

(c) As used in this section:

(1) 'Child care subsidy' means the use of public funds to pay for day care services for children.

(2) 'Person' means an individual, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

Section 2. Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 110-108. Financial incentives for counties to investigate and pursue alleged child care fraud.

The Department of Health and Human Services shall allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment claims collected by the local purchasing agency. Incentive bonuses under this section shall be used by the agency for the purchase of subsidized child care or to enhance and improve program integrity. The agency shall use at least seventy-five percent (75%) of the incentive bonus funds under this section for the purchase of subsidized child care. The agency shall not use more than twenty-five percent (25%) of the incentive bonus funds under this section for program integrity. On or before October 1 each year, each agency shall report to the Department of Health and Human Services on the use of the incentive bonuses under this section during the previous fiscal year. This section does not apply to overpayments due to administrative errors of local purchasing agency staff."

Section 3. G.S. 108A-39 reads as rewritten:

"§ 108A-39. Fraudulent misrepresentation.

(a) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in the amount of not more than ~~four hundred dollars~~

~~($400.00)~~ one thousand dollars ($1,000.00) is guilty of a Class 1 misdemeanor.

(b) Any person, whether provider or recipient, or person representing himself as such who willfully and knowingly with the intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact, obtains for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in an amount of more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000) is guilty of a Class I felony.

(c) As used in this section the word "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

Section 4. G.S. 108A-53 reads as rewritten:

"§ 108A-53. Fraudulent misrepresentation.

(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which that person is not entitled in the amount of ~~four hundred dollars ($400.00) or less~~ not more than one thousand dollars ($1,000) shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in an amount more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000) shall be guilty of a Class I felony.

(b) Whoever presents, or causes to be presented, food stamps or authorization cards for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Part or the regulations issued pursuant to this Part shall be guilty of a Class 1 misdemeanor.

(c) Whoever receives any food stamps for any consumable item knowing that such food stamps were procured fraudulently under

subsections (a) and/or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Whoever receives any food stamps for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a Class 1 misdemeanor."

Section 5. G.S. 108A-64 reads as rewritten:

"**§ 108A-64. Medical assistance recipient fraud.**

(a) It shall be unlawful for any person to knowingly and willfully and with intent to defraud make or cause to be made a false statement or representation of a material fact in an application for assistance under this Part, or intended for use in determining entitlement to such assistance.

(b) It shall be unlawful for any applicant, recipient or person acting on behalf of such applicant or recipient to knowingly and willfully and with intent to defraud, conceal or fail to disclose any condition, fact or event affecting such applicant's or recipient's initial or continued entitlement to receive assistance under this Part.

(b1) It is unlawful for any person knowingly, willingly, and with intent to defraud, to obtain or attempt to obtain, or to assist, aid, or abet another person, either directly or indirectly, to obtain money, services, or any other thing of value to which the person is not entitled as a recipient under this Part, or otherwise to deliberately misuse a Medicaid identification card. This misuse includes the sale, alteration, or lending of the Medicaid identification card to others for services and the use of the card by someone other than the recipient to receive or attempt to receive Medicaid program coverage for services rendered to that individual.

Proof of intent to defraud does not require proof of intent to defraud any particular person.

(c) (1) A person who violates a provision of this section shall be guilty of a Class I felony if the value of the assistance wrongfully obtained is more than ~~four hundred dollars ($400.00).~~ one thousand dollars (1,000).

(2) A person who violates a provision of this section shall be guilty of a Class 1 misdemeanor if the value of the assistance wrongfully obtained is ~~four hundred dollars ($400.00) or less.~~ not more than one thousand dollars ($1,000).

(d) For purposes of this section the word "person" includes any natural person, association, consortium, corporation, body politic, partnership, or other group, entity or organization."

Section 6. Sections 1, 3, 4, and 5 of this act becomes effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act becomes effective July 1, 1999.

HOUSE BILL 304:
Child Care Subsidy Fraud/AB

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representative Earle
Date:	April 8, 1999	**Summary by:**	Esther Manheimer
Version:	Com Sub of Second Edition		Committee Counsel
	Engrossed H304-PCSSK-001		Jo B. McCants, Staff Attorney

SUMMARY: *House Bill 304 is an agency bill that is recommended by the Division of Child Development. The bill makes it a crime to fraudulently obtain child care subsidies, and it also requires the Department of Health and Human Services (DHHS) to allow local purchasing agencies to keep monies recovered though fraud investigations.*

BILL ANALYSIS:

Fraudulent Misrepresentation.

Section 1. Amends Chapter 110 by adding a new section, G.S. 110-107. Section 1 of this bill makes it a crime for a person to fraudulently obtain or attempt to obtain a child care subsidy for himself or another person. The elements of the crime are:

- (1) making a false statement or representation regarding a material fact or failing to disclose a material fact; and
- (2) as a result of the false statement or representation or the omission, the person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or for another person.

If the amount of the subsidy fraudulently obtained is $1000.00 or less, the person is guilty of a Class 1 misdemeanor, and if the amount is greater than $1000.00, the person is guilty of a Class I felony.

Financial Incentive for Counties to Investigate and Pursue Alleged Child Care Fraud.

Section 2. Amends Chapter 110 by adding a new section, G.S. 110-108. Section 2 of this bill requires DHHS to allow each local purchasing agency to retain, as an "incentive bonus", the actual amount of child care fraud and overpayment of claims collected by the local purchasing agency. The local purchasing agency must use at least 75% of the incentive bonus to purchase subsidized child care. The remainder of the funds (up to 25%), may be used for program integrity. Each local purchasing agency must report to DHHS on or before October 1 of each year regarding how the incentive bonuses were used during the previous fiscal year.

Fraudulent Misrepresentation to Obtain Public Assistance, Food Stamps, and Medical Assistance.

Sections 3, 4, and 5. Under current law, it is a crime to fraudulently obtain public assistance (G.S. 108A-39), food stamps (G.S. 108A-53), or medical assistance (G.S. 108A-64). Under all three statutes, an individual is guilty of a Class I felony if the amount wrongfully obtained is more than **$400.00** and guilty of a Class 1 misdemeanor is the amount is $400.00 or less. Sections 3,

4, and 5 of HB 304 conform the laws regarding public assistance, food stamps, and medical assistance to HB 304. This bill would change the amount required for a Class I felony to an amount greater than **$1,000.00**.

Effective Dates.

Section 6. Sections 1, 3, 4, and 5 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. Section 2 becomes effective July 1, 1999.

jill

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 426 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF HIGH POINT TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 426

Short Title: High Point Red Light Cameras. (Local)

Sponsors: Representatives Jarrell; and Adams.

Referred to: Local Government II.

March 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF HIGH POINT TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-216 reads as rewritten:

"Section 2. This act applies to the City of Charlotte and the City of High Point only."

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) **Baddour** for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 514 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 514

Short Title: Huntersville Photo Enforcement. (Local)

Sponsors: Representative Saunders.

Referred to: Judiciary IV.

March 22, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-216 reads as rewritten:

"Section 2. This act applies to the City of Charlotte and the Town of Huntersville only."

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) **Baddour** for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 572 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF GREENVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 572

Short Title: Greenville Red Light Cameras. (Local)

Sponsors: Representative Edwards.

Referred to: Judiciary IV.

March 24, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF GREENVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-216 reads as rewritten:

"Section 2. This act applies to the City of Charlotte and the City of Greenville only."

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

HOUSE BILLS 426, 572, AND 514: High Point, Greenville, and Huntersville

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Rep. Jarrell (H426)
Date:	April 8, 1999		Rep. Edwards (H572)
Version:	First Edition		Rep. Saunders (H514)
		Summary by:	Esther Manheimer

SUMMARY:

House Bills 426, 572, and 514 would allow the cities of High Point, Greenville, and Huntersville **to adopt a local ordinance to enforce traffic offenses such as running a red light or stop sign through the use of a "traffic control photographic system".** A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor that works in conjunction with a traffic control device to automatically produce photographs, video or digital images of vehicles violating these types of statutes or ordinances.

The owner of a vehicle photographed would be responsible for the violation unless they can furnish evidence that, at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 shall be assessed. The citation will be mailed to the owner with no personal service required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to a civil penalty not to exceed $100. The cities must institute a nonjudicial administrative hearing to review objections to citations or penalties issued.

Currently this provision applies only to the City of Charlotte.

These acts are effective when they become law.

BACKGROUND:

There exists a dispute regarding whether the monies collected under this statute belong to the City of Charlotte, the only city to implement this system thus far, or the school board as required by the North Carolina Constitution, Article IX, Section 7. The City of Charlotte has invited the Charlotte City School Board to sue them to resolve this matter and in the meantime they have set aside all monies collected under this statute.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:11 p.m. on the 19th day of June, 1997.

S.B. 741

CHAPTER 216

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"*§ 160A-300.1. Use of traffic control photographic systems.*

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

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

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law on the date it was ratified.

H.B. 103 **CHAPTER 217**

AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3 or any action by the county or State boards of elections, the voting precincts of Avery County shall be the 19 precincts that were in existence on January 1, 1995, provided that Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous with the 19 precincts that were in existence on January 1, 1995.

Section 2. This act shall become effective when Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 786

Short Title: Commercial Felony Death By Vehicle. (Public)

Sponsors: Representatives Haire; Luebke and Hensley.

Referred to: Judiciary IV.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. -- A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Felony Death by Vehicle While Operating a Commercial Motor Vehicle. -- A person commits the offense of felony death by vehicle while operating a commercial motor vehicle if he unintentionally causes the death of another person while doing all the following which are the proximate cause of death:

(1) Being engaged in the violation of any State law applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

(2) Operating a Class A or a Class B motor vehicle with three or more axles with a GVWR of at least 26,001 pounds.

~~(a2)~~ (a3) Misdemeanor Death by Vehicle. -- A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired

driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(b) Punishments. -- Felony death by vehicle is a Class G felony. Felony death by vehicle while operating a commercial motor vehicle is a Class H felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. -- No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

Section 2. This act becomes effective December 1, 1999.

HOUSE BILL 786:
Commercial Felony Death By Vehicle

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Haire
Date:	April 7, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 786 creates a new offense of Felony Death by Vehicle While Operating a Commercial Motor Vehicle. This offense is punishable as a Class H felony.

CURRENT LAW: Under current law, the offense of Felony Death by Vehicle applies only in cases when a driver unintentionally causes the death of another person while engaged in the offense of impaired driving. The offense of impaired driving must be a proximate cause of the death. This offense is punishable as a Class G felony.

BILL ANALYSIS: House Bill 786 creates a new offense of Felony Death by Vehicle While Operating a Commercial Motor Vehicle. This offense applies when a person unintentionally causes the death of another person while (1) being engaged in the violation of any State law applying to the operation or use of a vehicle or to the regulation of traffic; and (2) operating a Class A or Class B motor vehicle with three or more axles and a GVWR of 26,001 pounds or more. These conditions must be the proximate cause of the death.

VISITOR REGISTRATION SHEET

Judiciary IV 4/08/99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Mary Carmela	Mecklenburg County
2.	by Avent-Farmer	NC DIV C. D.
3.	Roslyn Savitt	NC CWP & One Coalition
4.	Kim Hibbard	NCLM
5.	[illegible]	NCCJCD
6.	John M Mary	NC CWA Council
7.	Mike Ohrel	NC AFL-CIO
8.	Jeff Gwaltney	NCAHB
9.	Bill Parker	NC Assoc Comm
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MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 13, 1999

The House Committee on Judiciary IV met on Tuesday, April 13, 1999, in Room 421 LOB at l0:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Earle, Jeffus, Justus, McMahan, Mosley, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys were also present.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 477 Community College Campus Police. Rep. Jeffus, bill sponsor was recognized to explain the bill. After a brief discussion and comments from representatives of campus police and other interested parties, Rep. Haire moved for a favorable report. Motion carried.

HB 14 Cemetery Consumer Protection. Rep. Allred, bill sponsor, was recognized to explain the bill. Representatives of the AARP spoke in favor of the bill. Mr. Lucius Pullen spoke for the cemetery people and stated the bill was not necessary. Others spoke for and against the bill. The Chairman referred the bill to a Subcommittee to discuss it further and work out the differences. The following members were appointed to the Subcommittee with Rep. Thomas acting as Chairman: Reps. Thomas, Earle, Jeffus, McMahan, and Justus.

The meeting was adjourned at 10:55 a.m.

P Baddour

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coorides

Carolyn Coorides
Committee Assistant

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
H.B. 477 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF CAMPUS LAW ENFORCEMENT AGENCIES AT COMMUNITY COLLEGES.

☒ 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 2

HOUSE BILL 477
Committee Substitute Reported Without Prejudice 4/7/99

Short Title: Community College Campus Police. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF CAMPUS LAW ENFORCEMENT AGENCIES AT COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 115D is amended by adding the following new section to read:

"**§ 115D-21.1. Campus law enforcement agencies.**

(a) The board of trustees of any community college may establish a campus law enforcement agency and employ campus police officers. These officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the community college employing the officer and that portion of any public road or highway passing through the property and immediately adjoining it, wherever located.

(b) The board of trustees of any community college that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into the municipality's jurisdiction and to determine the circumstances under which this extension of authority may be granted.

(c) The board of trustees of any community college that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint

agreements with the governing board of any county, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into the county's jurisdiction and to determine the circumstances under which this extension of authority may be granted."

Section 2. G.S. 15A-402(f) reads as rewritten:

"(f) Campus Police Officers, Immediate and Continuous Flight. -- A campus police officer: (i) appointed by a campus law-enforcement agency established pursuant to G.S. 116-40.5(a); ~~or (ii)~~ (ii) appointed by a campus law enforcement agency established under G.S. 115D-21.1(a); or (iii) commissioned by the Attorney General pursuant to Chapter 74E and employed by a college or university which is licensed, or exempted from licensure, by G.S. 116-15 may arrest a person outside his territorial jurisdiction when the person arrested has committed a criminal offense within the territorial jurisdiction, for which the officer could have arrested the person within that territory, and the arrest is made during such person's immediate and continuous flight from that territory."

Section 3. G.S. 74E-6(f) reads as rewritten:

"(f) Campus Option. -- Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C or Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C or Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter."

Section 4. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E; and

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2)."

Section 5. This act is effective when it becomes law.

HOUSE BILL 477:
Community College Campus Police

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representative Jeffus
Date:	April 13, 1999	**Summary by:**	Robin Johnson
Version:	Committee Substitute H477-PCS4164-RH		Esther Manheimer Committee Counsel

SUMMARY: The Committee Substitute for House Bill 477 would authorize the board of trustees at each community college to choose to have its campus police trained and certified under Chapter 17C. This option is currently available to the boards of trustees of UNC's constituent institutions. The primary effect of the bill would be that community colleges choosing to train and certify their officers under Chapter 17C would no longer be required to pay annual fees for certification as company police agencies or for the commissioning of the campus police officers. **The bill would not change the current powers of campus police.** (The committee substitute makes only technical and conforming changes to the original bill.) The bill would take effect when it becomes law.

CURRENT LAW: Currently, community colleges are subject to the Company Police Act (Chapter 74E of the General Statutes). The Company Police Act applies to public and private educational institutions and hospitals, State institutions, and corporations engaged in providing on-site police security personnel services. Each agency may apply to the Attorney General to be certified as a company police agency and to commission an individual designated by that agency to act as a company police officer for that agency. Certification of an agency expires June 30 following the date issued, but is renewable. An officer's commission also expires on June 30 following the date issued, and is also renewable. The following fees apply:

Maximum Fee Application for Certification as Company Police Agency	$250
Annual Renewal of Certification	$200
Application for Reinstatement of Certification (following revoked or denied certification)	$1,000
Application for Commission as Company Police Officer	$100
Annual Renewal of Commission	$50
Application for Reinstatement of Commission	$150

Individuals who are commissioned as company police officers must take the same oath of office required of law enforcement officers. They must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by

the NC Criminal Justice Education and Training Standards Commission and must meet other minimum standards set by the Attorney General. Company police officers on community colleges are classified as campus police officers. They have the same powers, while in the performance of their duties of employment, as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on (i) real property owned by or in possession and control of the community college; (ii) real property owned by or in the possession and control of a person who has contracted with the community college to provide on-site company police security personnel services for the property; (iii) other real property while in continuous and immediate pursuit of a person for an offense committed on property described in (i) and (ii); and (iv) the portion of any public road or highway passing through or immediately adjoining the property described in (i) through (iii). Campus police officers may, if authorized by their superior, carry concealed weapons.

The board of trustees of any community college certified as a company police agency may enter into a mutual aid agreement with the governing board of a municipality or, with the sheriff's consent, a county.

Each constituent institution of The University of North Carolina is also subject to the Company Police Act; however, it may choose to have its officers certified under Chapter 17C (NC Criminal Justice Education and Training Standards Commission) or under Chapter 116 (Higher Education) of the General Statutes rather than under the Company Police Act. The NC Criminal Justice Education and Training Standards Commission (Commission) has numerous duties, including responsibility for the establishment of minimum educational and training standards for the employment, training, and retention of criminal justice officers (which would include campus police officers) and for the certification of qualified individuals. The Commission is directed to establish a cooperative arrangement among criminal justice agencies, including the Justice Academy, to provide education and training to officers and employees of these agencies.

The Commission may accept donations and grants from governmental units, public agencies, and others. It may authorize the reimbursement to each political subdivision of the State up to 60% of the salary and allowable tuition, living and travel expenses incurred by officers who attend approved training programs. It may provide grants as reimbursement for actual expenses incurred by the State or any political subdivision of the State in order to provide training programs of officers from other jurisdictions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 14*

Short Title: Cemetery Consumer Protection. (Public)

Sponsors: Representatives Allred, Earle, and Sexton.

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

February 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-53 is amended by inserting a new subdivision to read:

"(3a) Investigate, upon its own initiative or upon a verified complaint in writing, whether a particular contract for the sale of personal property or services, whether preneed or at-need, contains the disclosures required pursuant to G.S. 65-66(d) and to adopt temporary rules pursuant to Chapter 150B of the General Statutes, if necessary, to implement this subdivision until such time as permanent rules are adopted."

Section 2. G.S. 65-66(d) reads as rewritten:

"(d) Any contract for the sale of personal property ~~and/or~~ or ~~services~~ services, whether preneed or at-need, shall ~~state~~ disclose ~~separate costs~~ the following:

(1) A specific description of each item of personal property purchased and the cost for each item of personal ~~property,~~ property and for each act of installation or other service required by the contract, ~~and for each other item of services included in the contract.~~ including any costs for the right of interment, entombment, or inurnment;

(2) Specification of whether opening and closing of a grave space, mausoleum space, or columbarium space is included in the contract, and, if not, the current prices for opening and closing and a statement that these prices are subject to change;

(3) Any requirements or costs relating to memorial markers, including any obligations of the grave space, mausoleum space, or columbarium space owner if the owner desires to have an outside provider provide the marker and any costs relating to having an outside provider provide and place a marker;

(4) A statement describing, in language that is readable and understandable by a person of average intelligence, experience, and education, the nature of the property right in the grave space, mausoleum space, or columbarium space;

(5) A statement that a preneed purchaser has, pursuant to G.S. 65-66(m), 30 days following the execution of a contract to cancel the contract by giving written notice to the seller and that the seller may cancel the contract, upon default by the purchaser, by giving written notice to the purchaser. The statement shall include (i) whether or not the purchaser may transfer the purchaser's rights in the property to another person or organization and (ii) whether or not the seller will refund all or part of the purchase price and the conditions under which a refund will be made, after the 30-day period, including the purchaser moving from one locale to another;

(6) If the grave space, mausoleum space, or columbarium space has been previously sold by the cemetery company to a purchaser and the space was used in the final disposition interment, entombment, or inurnment of human remains and has since returned to the inventory of available spaces, a statement that the space has been used for a prior interment, entombment, or inurnment;

(7) A statement identifying the person or legal entity which owns the cemetery or provides the property or services, including whether the entity is wholly or partially owned by another corporation; and

(8) That the purchaser is permitted to obtain products and services from an outside provider bonded and qualified pursuant to subsection (n) of this section; and if the purchaser elects to obtain products and services from such an outside provider, a statement disclosing any fees or assessments charged to the outside provider or to the purchaser."

Section 2.1. G.S. 65-66 is amended by adding a new subsection to read:

"(n) A cemetery company shall not prohibit providers of cemetery products or services from providing products or services to persons having rights in a grave space, mausoleum space, or columbarium space so long as the provider is properly bonded to provide the product or service. A funeral establishment duly licensed pursuant to Article 13A of Chapter 90 of the General Statutes or other providers of cemetery

products or services which maintain comprehensive liability insurance coverage of at least one million dollars ($1,000,000), and their agents or employees of such an establishment acting on its behalf shall be considered properly bonded to provide such products or services as otherwise permitted by law. This subsection does not prohibit a cemetery company from adopting reasonable rules to ensure that these providers follow procedures established by the cemetery company to fulfill its obligation to its purchasers."

Section 3. G.S. 65-53 is amended by adding a new subdivision to read:

"(9) The Commission shall keep records of the complaints received and the action taken by the Commission on each complaint. These records shall be kept for at least five years after receipt of the complaint."

Section 4. G.S. 65-71 is amended by adding a new subsection to read:

"(c) Failure to comply with the disclosure requirements contained in G.S. 65-66(d) shall be punishable as a Class 3 misdemeanor."

Section 5. The Department of Justice through the Office of the Attorney General, Consumer Protection Division, shall ensure that private, for-profit cemetery companies operate within Article 1 of Chapter 75 of the General Statutes, titled "Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade practices laws.

Section 6. This act becomes effective January 1, 2000, and is applicable to contracts entered into on or after that date.

HOUSE BILL 14:
Cemetery Protection

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representatives Allred, Earle and Sexton
Date:	April 13, 1999		
Version:	First Edition	**Summary by:**	Esther Manheimer Committee Counsel

SUMMARY: House Bill 14 would expand the Cemetery Commission's powers, and would require that certain disclosures be made in each preneed and at-need contract. The bill would also require that outside service providers be allowed to provide services to persons having rights in a cemetery company's grave space. Finally, House Bill 14 would require the Cemetery Commission to keep certain records, and would make a violation of the disclosure requirements a Class 3 misdemeanor.

BILL ANALYSIS:

Expand Authority of the Cemetery Commission.

Section 1. Amends G.S. 65-53 by adding a new subdivision. G.S. 65-53 lists the powers and duties of the Cemetery Commission, and section 1 of this bill would expand those powers to include: the power to investigate whether a contract (e.g. a preneed or at-need contract) contains certain disclosures. Those disclosures are listed in section 2. In addition, the Cemetery Commission may adopt rules to implement this subdivision.

Disclosures Required in each Contract (e.g. preneed and at-need).

Section 2. Amends G.S. 65-66(d) and would add a list of disclosures required to be included in each contract for the sale of personal property or services (e.g. preneed and at-need contracts). The required disclosures are as follow:

1. An itemized **list of personal property and services purchased and their cost** (required to be disclosed under current law).
2. **Whether the opening and closing of a grave space is included** (if not, then a list of prices for this service).
3. **Requirements relating to memorial markers** (including requirements for using an outside provider).
4. **Statement regarding the nature of the property right.**
5. Statement that preneed **purchasers have 30 days to cancel their contract** and that the seller may cancel upon default of the purchaser. Also, statement must include whether purchaser's rights are transferable and refund policies.
6. If the **grave space was previously used**, a statement to that effect.
7. **Statement identifying the owner** of the cemetery or the services provider.
8. **A statement that the purchaser may use and outside provider** and fees assessed against the outside provider.

Outside Bonded Providers must be Permitted.
Section 2.1 Amends G.S. 65-66 by adding a new subsection. Section 2.1 would require cemetery companies to allow outside, bonded products and services providers to provide products and services to persons having rights in a cemetery company's grave space. Properly bonded funeral establishments must be licensed and maintain one million dollars in comprehensive liability insurance.

Cemetery Commission Record Keeping Required.
Section 3. Amends G.S. 65-53 by adding a new subdivision. This section would require the Cemetery Commission to keep records of complaints received and actions taken.

Failure to Comply with Contract Disclosure Requirement is a Class 3 Misdemeanor.
Section 4. Amends G.S. 65-71 by adding a new subdivision. This section would make it a Class 3 misdemeanor for failure to comply with the contract disclosure requirements. Under current law, violation of the North Carolina Cemetery Act is a Class 1 misdemeanor and in some cases a Class I felony.

Consumer Protection Division of the Attorney General's Office to Ensure Chapter 75 Enforced.
Section 5. States that the Consumer Protection Division of the Attorney General's Office will ensure that Article 1 of Chapter 75 is enforced against private, for-profit cemetery companies. (Chapter 75, Article 1 deals with unfair and deceptive trade practices, etc.)

Section 6. This act becomes effective January 1, 2000, and is applicable to contracts entered into on or after that date.

BACKGROUND: House Bill 14 is a study commission bill recommended by the Committee on Cemetery Issues.

VISITOR REGISTRATION SHEET

Judiciary IV April 13,1999

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Jon Carr	Jordan Price
2.	Bob Stoltz	GTCC Campus Police
3.	Hal Miller	NCACCT
4.	Lucius Fuller	ATTORNEY
5.	Henry Landsberger	AARP
6.	Richard W. Hatch	AARP
7.	[illegible]	NCCCS
8.	Theresa Stanion	AARP
9.	Priscilla Swindell	AARP
10.	J. Allen Adams	PARKER, POE, ADAMS & BERNSTEIN
11.	Jack Cozort	"
12.	Becki Gilbert	"
13.	FRED TAYLOR	WRAL-TV
14.	VLM Bride	NCAA
15.	George Gray Jr	NC DMV ENF
16.	Jim Edwards	NC DMV ENF.
17.	[illegible]	Reginald Speaks
18.	Lt. J.M. Stone	GTCC Campus Police
19.	David L	NCAPA
20.	Nat Mord	CCNC
21.	Stephanie Gibbs	Town of Pittsboro

VISITOR REGISTRATION SHEET

Judiciary IV April 13, 1999

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	[illegible]	AP
2.	Ann Bakewell	MCNS
3.	[illegible]	DOT
4.	K.D. Sturgis	Attorney General's Office
5.	Colon Willoughby	Dist Atty Off - 10B Dist.
6.	Doc Hoggard	NC DOJ ITS
7.	Sharon Thompson	NC CCS
8.	Diana J. Clary	N.C. DOJ TIS
9.	Jeff Jurgens	N.C. DOT Law Enf. Liaison
10.	Larry Ferrell	NC Forensic Directors Assoc
11.	[illegible]	NC State AFL CIO
12.	John Phelps	NCLM
13.	Nina Hayes	Poyner & Spruill
14.		
15.		
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MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 14, 1999

The House Committee on Judiciary IV met on Wednesday, April 14, 1999 at 7:30 a.m.in Room 421 of the Legislative Office Building. Chairman Phil Baddour presided. Other members present were: Vice Chairman Scott Thomas, Vice Chairman Phil Haire, Representative(s) Justus; McMahan, and Saunders.

Committee Staff, Tim Hovis and Esther Manheimer, were also present.

The following bill was considered:

HB 409 A BILL TO BE ENTITLED AN TO AUTHORIZE THE STATEWIDE USE OF CAMERAS TO DETECT TRAFFIC OFFENSES. Representative Saunders, a primary sponsor of the bill, was asked to explain HB 409. A printed summary was provided by staff and is attached for the record.

Representative Justus was recognized to offer an amendment to HB 409, which is attached. Following discussion of the amendment, Representative Haire expressed his opposition to the amendment and made a motion that it not be adopted. The motion carried.

In response to Representative Justus' question regarding where the money generated by the bill would go, Representative Saunders replied that the town officials will have the freedom to make this decision.

Representative Haire moved for a favorable report of HB 409 and the motion carried.

There being no other bills on the agenda of this meeting, the meeting was adjourned at 8:00 a.m.

Representative Phil Baddour
Chairman

Jackie Hamby
Acting Committee Assistant

Jelle
reported 4-14-99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 409 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE STATEWIDE USE OF CAMERAS TO DETECT TRAFFIC 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

72467 SHIELDS BUSINESS FORMS, RALEIGH, NC 27605

H-II
4-14-99

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

unfavorable

EDITION No. _____

H. B. No. 409 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Justus
)
Sen.)

1 moves to amend the bill on page 1, lines 4-5
2 ( ) WHICH CHANGES THE TITLE
3 by inserting the following between those lines:
4
5 " Section 1. G.S. 160A-300.1 is amended by
6 adding a new subsection to read:
7 '(d) This section shall not apply to
8 roads with a U.S. Highway or
9 Interstate designation." ;
10
11 and by renumbering the remaining
12 sections accordingly.
13
14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

J-IV
4-14-99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 409

Short Title: Traffic Cameras OK'd Statewide. (Public)

Sponsors: Representatives Saunders, Earle, and Jeffus (Primary Sponsors).

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

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATEWIDE USE OF CAMERAS TO DETECT TRAFFIC OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-216 is repealed.

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

HOUSE BILL 409:
Traffic Cameras OK'd Statewide

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representatives Saunders, Earle, and Jeffus
Date:	April 13, 1999		
Version:	First Edition	**Summary by:**	Esther Manheimer Committee Counsel

SUMMARY:

House Bill 409 would repeal Section 2 of S.L. 1997-216. The effect of this repeal would be to allow all municipalities **to adopt a local ordinance to enforce traffic offenses such as running a red light or stop sign through the use of a "traffic control photographic system".** Municipalities would exercise this authority under 160A-300.1. A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor that works in conjunction with a traffic control device to automatically produce photographs, video or digital images of vehicles violating these types of statutes or ordinances.

The owner of a vehicle photographed would be responsible for the violation unless they can furnish evidence that, at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 shall be assessed. The citation will be mailed to the owner with no personal service required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to a civil penalty not to exceed $100. The cities must institute a nonjudicial administrative hearing to review objections to citations or penalties issued.

Currently, 160A-300.1 applies only to the City of Charlotte.

This act is effective when it becomes law.

BACKGROUND:

There exists a dispute regarding whether the monies collected under this statute belong to the City of Charlotte, the only city to implement this system thus far, or the school board as required by the North Carolina Constitution, Article IX, Section 7. The City of Charlotte has invited the Charlotte City School Board to sue them to resolve this matter and in the meantime they have set aside all monies collected under this statute.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:11 p.m. on the 19th day of June, 1997.

S.B. 741

CHAPTER 216

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"*§ 160A-300.1. Use of traffic control photographic systems.*

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

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

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law on the date it was ratified.

H.B. 103 **CHAPTER 217**

AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3 or any action by the county or State boards of elections, the voting precincts of Avery County shall be the 19 precincts that were in existence on January 1, 1995, provided that Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous with the 19 precincts that were in existence on January 1, 1995.

Section 2. This act shall become effective when Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous

AGENDA

HOUSE JUDICIARY IV COMMITTEE

April 15, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Carolyn Coordes (Committee Assistant)

BILLS TO BE CONSIDSERED:

(2) HB786 Commercial Felony Death by Vehicle
Sponsor: Rep. Haire

(1) HB 114 Guardian Ad Litem/Attys
Sponsor: Rep. Hiatt

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 15, 1999

The House Committee on Judiciary IV met on Thursday, April 15, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Scott Thomas, Representatives Bowie, Decker, Earle, Jeffus, Justus, McMahan, and Tallent. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 114—To Provide for Attorney Representation of Children Represented by Guardian Ad Litem Program Throughout Proceedings of the Case. Rep. Hiatt, bill sponsor, was recognized to explain the bill. Rep. Hiatt offered a proposed committee substitute. Rep. McMahan moved for adoption of the proposed committee substitute for purpose of discussion. Motion carried. Rep. Hiatt requested that Ms. Ilene Nelson, Administrator of the Guardian Ad Litem program be allowed to explain the committee substitute. After explanation and brief discussion, Rep. Haire moved for a favorable report as to the committee substitute and unfavorable as to original bill. Because of a question raised by a member, a vote was not taken.

HB 786—Commercial Felony Death by Vehicle. Rep. Haire, bill sponsor, was recognized to explain the bill. He sent forth a proposed committee substitute. Rep. Tallent moved for adoption of the proposed committee substitute for purpose of discussion. Rep. Haire explained the proposed committee substitute. After discussion by the members, it was decided not to take a vote until the next meeting.

The Chairman announced the committee would need to have some extra meetings in order to meet the cross over deadline for bills in our committee. The next meeting will be at 7:30 a.m., Tuesday, April 20.

The meeting adjourned at 10:50 a.m.

Representative Phil Baddour
Chairman

Carolyn Coordes
Committee Assistant

HOUSE BILL 114

Short Title: Guard. Ad Litem/Attys. (Public)

Sponsors: Representatives Hiatt; Alexander, Insko (Primary Sponsors), Tolson, Smith, Sherrill, and Hensley.

Referred to: Judiciary IV.

February 22, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-601, as recodified by Section 6 of S.L. 1998-202, reads as rewritten:

"**§ 7B-601. Appointment and duties of guardian ad litem.**

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate at the end of two years. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights ~~through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the juvenile.~~ within the proceeding. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of

the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) The court may order the department of social services or the guardian ad litem to conduct follow-up investigations to ensure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The court may also authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) The court may grant the guardian ad litem the authority to demand any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H114-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 114
THIS IS A DRAFT 14-APR-99 17:31:06
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Guard. Ad Litem/Attys. (Public)

Sponsors:

Referred to:

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-601, as recodified by Section 6 of S.L. 1998-202, reads as rewritten:

"**§ 7B-601. Appointment and duties of guardian ad litem.**

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The juvenile is a party in all actions under this Subchapter. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate ~~at the end of two years.~~ when the permanent plan has been achieved

for the juvenile and approved by the court. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights ~~through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the juvenile.~~ throughout the proceeding. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional ~~hearing;~~ hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) ~~The court may order the department of social services or the guardian ad litem to conduct follow-up investigations to ensure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met.~~ The court may ~~also~~ authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) ~~The court may grant the~~ The guardian ad litem has the authority to ~~demand~~ obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. ~~Neither the physician-patient privilege nor the husband-wife privilege~~ No privilege other than the attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law."

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

HOUSE BILL 114:
Guard. Ad Litem/Attys.

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Hiatt
Date:	April 14, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 114 provides that, in cases of abused, neglected, or dependent juveniles, an attorney shall be appointed at all times within the proceeding to assure protection of the juvenile's legal rights.

CURRENT LAW: Under current law, an attorney is required to be appointed in all cases of abuse, neglect, or dependency through the dispositional phase of the proceedings and after disposition when necessary to further the best interests of the juvenile. In the despositional phase of the proceeding, the court may dismiss the case or provide for continued care and supervision of the juvenile, including termination of a parent or guardian's custody.

BILL ANALYSIS: House Bill 114 would require that an attorney be appointed at all times within the proceeding in cases of abuse, neglect, or dependency.

FISCAL ANALYSIS MEMORANDUM

DATE: April 14, 1999

TO: Representative Bill Hiatt

FROM: Charlie Perusse (CP)
Fiscal Research Division

RE: House Bill 114 – Guardian Ad Litem Attorneys

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
Guardian Ad Litem Attorney Expenses	$100,000	$105,000	$110,250	$115,763	$121,551

* 5% increase in expenditures has been added each year due to the anticipated increase in the number of total proceedings

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department, Guardian ad Litem Program

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: This act would provide that an attorney be present at step of the proceeding when a non attorney is appointed as a guardian ad litem in a case rather than just through the dispositional phase of the case.

ASSUMPTIONS AND METHODOLOGY:

The Fiscal Research Division believes this legislation would have a moderate fiscal impact on Guardian ad Litem (GAL) attorney expenditures. In FY 1997-98 approximately 2,146 of 22,378 total proceedings (or 10%) occurred without an attorney present. This bill would require that an attorney be present at all of these proceedings in order to assist non-attorney GAL volunteers. Currently, the GAL Program spends about $1,000,000 each year to provide representation for these proceedings. Thus, it is estimated that these other proceedings that didn't have attorneys present before would require an additional **$100,000** in attorney expenses each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 786

Short Title: Commercial Felony Death By Vehicle. (Public)

Sponsors: Representatives Haire; Luebke and Hensley.

Referred to: Judiciary IV.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. -- A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Felony Death by Vehicle While Operating a Commercial Motor Vehicle. -- A person commits the offense of felony death by vehicle while operating a commercial motor vehicle if he unintentionally causes the death of another person while doing all the following which are the proximate cause of death:

(1) Being engaged in the violation of any State law applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

(2) Operating a Class A or a Class B motor vehicle with three or more axles with a GVWR of at least 26,001 pounds.

~~(a2)~~ (a3) Misdemeanor Death by Vehicle. -- A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired

driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(b) Punishments. -- Felony death by vehicle is a Class G felony. Felony death by vehicle while operating a commercial motor vehicle is a Class H felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. -- No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

Section 2. This act becomes effective December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H786-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 786
THIS IS A DRAFT 15-APR-99 08:52:03
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Commercial Felony Death By Vehicle. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE FOR CERTAIN OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. -- A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or ~~G.S.~~ 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Felony Death by Commercial Motor Vehicle. -- A person commits the offense of felony death by commercial motor vehicle if he unintentionally causes the death of another person while operating a Class A or a Class B motor vehicle with three or more axles and a GVWR of at least 26,001 pounds while being engaged in any of the following offenses which are the proximate cause of death:

(1) Passing stopped school bus, G.S. 20-217.
(2) Reckless driving, G.S. 20-140.
(3) Following too closely, G.S. 20-152.
(4) Driving on wrong side of the road, G.S. 20-146, 20-147, or 20-165.1.
(5) Illegal passing, G.S. 20-148, 20-149, 20-150, 20-150.1 or G.S. 20-151.
(6) Running through stop sign or red light, G.S. 20-158.
(7) Speeding more than 15 miles per hour more than the speed limit or over 80 miles per hour, G.S. 20-141(j1).
(8) Failing to yield right-of-way, G.S. 20-155, 20-156, and 20-158.1.
(9) Failure to stop for siren, G.S. 20-157.
(10) Driving through safety zone, G.S. 20-160.
(11) Speeding in school zone in excess of the posted school zone limit, G.S. 20-141.1.
(12) Illegal crossing or approach of railroad tracks and intersections, G.S. 20-142.1 through 20-142.5.

~~(a2)~~ (a3) Misdemeanor Death by Vehicle. -- A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1 or 20-138.2, and commission of that violation is the proximate cause of the death.

(b) Punishments. -- ~~Felony death by vehicle~~ A violation of subsection (a1) of this section is a Class G felony. A violation of subsection (a2) of this section is a Class H felony. ~~Misdemeanor death by vehicle~~ A violation of subsection (a3) of this section is a Class 1 misdemeanor.

(c) No Double Prosecutions. -- No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

Section 2. This act becomes effective December 1, 1999.

of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	6
Reckless driving	6
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	4
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	2

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads	
Over length	
Over width	
Over height	
Illegal parking	
Carrying concealed weapon	
Improper plates	
Improper registration	
Improper muffler	
Public drunk within a vehicle	
Possession of alcoholic beverages	
Improper display of license plates or dealers' tags	
Unlawful display of emblems and insignia	
Failure to display current inspection certificate.	

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that

4-15-99

VISITOR REGISTRATION SHEET

House Judiciary IV Committee

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Ru Moore	Dist Atty
2.	Laura Hartzell	NC Bar Association
3.	Jim L. Edwards	NC DMV Enforcement
4.	George Hays	NC DMV Enforcement
5.	FRED TAYLOR	WRAL-TV
6.	AL DEITCH	NCDA/YATO
7.	James Andrews	NC State AFL-CIO
8.	Mike Dunn	"
9.	John McMorrow	NC Child Council
10.	CP Medlin	Covenant w/ NC's Children
11.	Jane Upchurch	CPL
12.	Ellen Allen	ZNAPA
13.	Bill Kratt	Wyrick Robbins - for NC Bar Assoc.
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 20, 1999

The House Committee on Judiciary IV met on Tuesday, April 20, 1999 in Room 421 LOB at 7:30 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Jeffus, Justus, McMahan, Mosley, Pope, and Saunders.

The Chairman called the meeting to order and welcomed Rep. Art Pope to the committee, who became a member after the resignation of Rep. Neely. He then called for consideration of the following bills:

HB 1100 Removal/Resignation of Trustees. Rep. Haire, bill sponsor, was recognized to explain the bill. Rep. Haire recognized Mr. Bill Kratt for comments. Rep. Haire presented an amendment and moved its adoption. The bill was displaced to answer a question on statute of limitations. No vote was taken.

HB 114 Guardian Ad Litem/Attorneys. Rep. Hiatt, bill sponsor, presented the bill. Chris Marks of the Administrative Office of the Courts gave remarks regarding absorbing the additional money required. The bill was again displaced to determine whether or not it should go to Appropriations. No vote was taken.

HB 980 Workers'Compensation/Third Party Actions. Rep. Baddour, bill sponsor, asked Rep. Haire to take the chair while he explained the bill. Rep. Baddour explained the bill, sent forth an amendment and moved for its adoption. The amendment passed and will be put into a committee substitute. Rep. Bowie moved for a favorable report as to committee substitute and unfavorable report as to original bill.

The meeting adjourned at 8:30 a.m.

Representative Phil Baddour
Chairman

Carolyn Coordes
Committee Assistant

Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced with one year after receipt of the final account or statement. All other actions for breach of trust brought under this Article are barred unless commenced within three years after the beneficiary received a final account or statement from the trustee.

Amendment to HB1100

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1100

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors: Representative Haire.

Referred to: Judiciary IV.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"ARTICLE 3.

~~"Resignation, Removal, and Renunciation of Trustees.~~ "Trust Administration.

~~"§ 36A-22. Applicability of this Article.~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"§ 36A-22.1. Definitions.

As used in this Article:

(1) 'Beneficiary' means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer and (ii) any person entitled to enforce a charitable trust.

(2) 'Fiduciary' includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) 'Interested person' includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in a particular proceeding.

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

(5) 'Trust' includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, and 54B-129, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) 'Trustee' includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

~~"§ 36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"§ 36A-23.1. Court; jurisdiction of trusts.

(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this section, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;
(2) To review trustees' fees and review and settle interim or final accounts; and
(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court.

(b) To the extent that the procedures in this Article for proceedings before the clerk concerning the administration of trusts conflict with the procedures for proceedings heard by the clerk, the provisions of this Article control.

(c) A proceeding under this section does not result in continuing supervisory proceedings.

(d) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

(e) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

~~"§ 36A-24. Petition; contents and verification.~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"§ 36A-24.1. Trust proceedings; venue.

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides. Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(2) The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate trustee; or

(3) The usual place of business or residence of any of the cotrustees as agreed upon by the cotrustees.

~~"§ 36A-25. Parties; hearing; successor appointed.~~

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petitioner in the manner provided in this Article.~~

"§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state where the trust has its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

~~"§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"§ 36A-26.1. Trust proceedings; necessary parties.

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. The clerk shall issue the summons for the defendants, and except as provided in this Article, the procedure shall be the same as in other special proceedings. The clerk may order notification of additional persons. An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to answer the petition and to offer evidence against granting the petition. The clerk shall then proceed to hear and determine the matter.

"§ 36A-26.2. Waiver of notice.

An interested person, or a person representing an interested person as provided in G.S. 36A-26.3, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"§ 36A-26.3. When parties represented by others.

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. If the clerk finds that there is no conflict of interest between the interested person and the person representing the

interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. If the clerk finds that another party has an interest in the proceeding substantially identical to the interest of an unborn or unascertained person who is not otherwise represented, that party shall represent the unborn or unascertained person.

d. At any point in a proceeding, a clerk shall allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

(4) An order binding a person who represents an interested person binds the interested person.

Nothing in this section authorizes the disbursement of funds distributable to any person to those authorized to represent that person under this section.

"§ 36A-27. Appeal; stay effected by appeal.

Any party in interest may appeal from the decision of the clerk to the ~~judge at chambers,~~ superior court, ~~and in such event the procedure shall be the same as in other special proceedings as now provided by law.~~ If ~~the clerk allows the resignation, and~~ an appeal is taken from ~~his decision,~~ the decision of the clerk, such appeal shall ~~have the effect to~~ stay the judgment and order of the clerk until the cause is heard and determined by the ~~judge~~ superior court upon the appeal taken. To the extent that the procedure for an appeal from an order of the clerk concerning administration of a trust provided under this Article conflicts with the procedure for appeal from orders of the clerk in other matters, the provisions of this Article control.

"§ 36A-28. On appeal judge determines facts.

Upon an appeal taken from the clerk to the ~~judge,~~ superior court, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the appellate division.

"§ 36A-29. Final accounting before resignation.

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~"§ 36A-30. Resignation effective on settlement with successor.~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"§ 36A-30.1. Limitations on proceedings by beneficiaries against trustees.

Unless previously barred by adjudication, consent, or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within one year after receipt of the final account or statement. In any event, and notwithstanding the trustee's failure to make full disclosure, a beneficiary's claim for breach of trust is barred three years from the date upon which the beneficiary received a final account or statement issued by the trustee, and the trustee informed the beneficiary of the location and availability of records for the beneficiary's examination. A beneficiary is deemed to have received a final account or statement if an adult beneficiary receives the account or statement personally and if the representative of a minor or disabled beneficiary as described in G.S. 36A-26.4 receives the account or statement.

"§ 36A-31. ~~Court to appoint successor; when~~ When bond required.

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court;~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands when bond is executed by a personal ~~surety~~ surety, and in an amount not less than one and one-fourth times the value of all personal property of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of ~~his~~ the trustee's duties ~~as such trustee~~ and for the payment to the persons entitled to receive ~~the same of~~ all moneys, assets, or other things of value which may come into ~~his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond.~~ the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

"§ 36A-32. Rights and duties devolve on successor.

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the~~ A successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the ~~creating~~ governing instrument.

"§ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor trustee on clerk's own motion.

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased~~

~~or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the decision of the clerk as provided in G.S. 36A-27 and 36A-28.~~

~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this ~~section~~ Article shall be construed to limit the authority of the clerk ~~of superior court~~ to appoint a successor trustee to a deceased or incapacitated trustee upon ~~his~~ the clerk's own motion.

~~"§ 36A-34. Testamentary trustee may renounce.~~

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (c) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable~~

~~trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~"§ 36A-35. Removal of trustee.~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"**§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.**

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~"§ 36A-38. Powers of successor trustee.~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"**§ 36A-39. Powers of cotrustees.**

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"**§ 36A-40. Vesting of title.**

A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~"§ 36A-41. Applicability.~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"**§§ 36A-42 through 36A-46:** Reserved for future codification purposes."

Section 2. This act becomes effective October 1, 1999, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established before or after that date.

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

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HOUSE BILL 1100 REMOVAL/RESIGNATION OF TRUSTEES

This proposed legislation revises and improves current Chapter 36A, Article 3 by incorporating certain provisions of the Uniform Probate Code:

Current statute: The law is unclear as to appropriate venue for proceedings concerning the administration of a trust. (Specifically, is the venue before a judge or a clerk of court?)
Proposed legislation: Establishes clear jurisdiction, giving the clerk of court exclusive jurisdiction over most proceedings concerning trust administration, distribution, and other issues internal to the operation of the trust.

Current statute: A clerk's decision to accept a trustee's resignation must be approved by a superior court judge.
Proposed legislation: A clerk's decision to accept the resignation of a trustee is effective and does not need a judge's approval.

Current statute: A resigning trustee is not free from liability, *even after a clerk has accepted the trustee's accounting*, until the successor trustee accepts the resigning trustee's accounting.
Proposed legislation: A resignation approved by a clerk of court releases the resigning trustee from liability.

Current statute: When a successor trustee is appointed, he or she must put up a bond ranging in amount from double the value of the trust's personal property to one-and-a-fourth the value of the decedent's personal property.
Proposed legislation: A successor trustee is not required to put up a bond. There are two exceptions to this general rule--
(1) when the trust instrument requires a bond; or
(2) if the clerk deems a bond to be necessary.

The North Carolina Bar Association urges passage of House Bill 1100 to improve the administration of trusts in North Carolina.

LAURA E. HARTSELL, ASSISTANT DIRECTOR OF GOVERNMENTAL AFFAIRS
LHARTSEL@MAIL.BARLINC.ORG • 919.677.0561 EXTENSION 380

HOUSE BILL 1100:
Removal/Resignation of Trustees

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representative Haire
Date:	April 20, 1999	**Summary by:**	Esther Manheimer
Version:	First Edition		Committee Counsel

SUMMARY: *House Bill 1100 is a North Carolina Bar Association bill that would make changes to Article 3 of Chapter 36A regarding the resignation and removal of trustees, and incorporates part of the Uniform Probate Code. The bill would expand the jurisdiction of the clerk of court from proceedings regarding the removal and resignation of trustees to all matters concerning the internal affairs of a trust. The bill would eliminate bond requirements and the requirement that a guardian ad litem be appointed in certain situations. In addition, the bill changes current accounting requirements. The bill reorganizes much of Article 3 and eliminates sections that are duplicated in other areas of the Article. The bill also makes numerous technical changes. This act becomes effective October 1, 1999, and applies to all trustees covered by the provisions of Article 36A, whether administering trusts before or after that date.*

BILL ANALYSIS:

Article Title Change. Under House Bill 1100, the title of Article 3 would change from "Resignation, Removal, and Renunciation of Trustees", to "Trust Administration".

Addition of a Definition Section: Definitions for the following terms have been added to Article 3: beneficiary, fiduciary, interested person, person, trust, and trustee.

Clerk of Superior Court's Jurisdiction: Under current law, the clerk of superior court has jurisdiction over matters regarding the resignation and removal of trustees. However, the clerk's order must be submitted to and approved by a superior court judge. House Bill 1100 would expand the clerk's current jurisdiction over trusts to include **all internal affairs of the trust** except proceedings to modify or terminate the trust, and the clerk's order would not require the approval of a superior court judge.

> All internal affairs include: ascertaining beneficiaries, questions regarding the administration/distribution of the trust, question regarding the construction of the trust, and the determination of whether a trust exists (other than trusts created by a will).

Venue for Proceedings. Under current law, Article 3 made no provisions regarding the venue for proceedings held under this Chapter. This bill would mandate that venue would be in the county where accountings are filed if the trustee is required to account to the clerk. If no accounting is required, then venue is in the county where the principal place of administration of the trust is located. The bill also provides for situations where there is more than one trustee. When the principal place of administration is in another state, the clerk may not entertain a trust proceeding unless certain circumstances are present.

Trust Proceedings.

- Under current law, in a proceeding before the clerk under Article 3, the trustee is the plaintiff and the beneficiaries are the defendants. This bill would make **the petitioner the plaintiff and all known beneficiaries and trustees the defendants**.
- The bill deletes much of what is required to be included in a petition and replaces it with the requirement that **"interests to be affected" must be described in the pleadings.**
- **Summons** would be issued the same as in other special proceedings.
- An **order would be valid as to all persons given notice** even if all interested persons are not notified.
- **Interested persons may be represented by others** in certain situations. Under current law, infants must be appointed a guardian ad litem. The bill would allow a parent to represent a minor, and one with substantially similar interests may represent unborn persons or unascertained persons. Also, HB 1100 provides that the clerk would have discretion as to whether the appointment of a guardian ad litem is necessary for the following persons: a minor, an incapacitated person, an unborn person, or an unascertained person, or a person whose identity is unknown.

Appeals Procedure. HB 1100 makes clear that the clerk's order may be appealed to superior court.

Accounting Requirements. Under current law, a trustee may not resign until a final accounting has been filed with the clerk and the clerk has found it to be true and correct. In addition, the trustee is not released from liability until an accounting is accepted by the successor trustee. HB 1100 would repeal the above provisions and require that if an accounting is required that the trustee may not resign until the court is satisfied that the accounting is true and correct. Once the accounting is accepted as true and correct, then the trustee is released even if a successor trustee has not been appointed.

Statute of Limitations. The bill would impose a statute of limitations for actions brought under Article 3.

Bond Requirements. Under current law, trustees must provide bond to secure performance of the trustee's duties unless the clerk found that the trust did not require bond or bond was not needed for the protection of the estate. HB 1100 would eliminate the requirement of bond unless the trust required it or the clerk found that bond was necessary to protect the interests of the beneficiaries.

Deceased or Incapacitated Trustees. The bill deletes many of the provisions regarding the appointment of a successor trustee where a trustee dies or becomes incapacitated. Many of the deleted provisions were unnecessarily duplicated in this section. However, the bill deletes the requirement that the clerk appoint a "fit and suitable person" to act as successor trustee.

Testamentary Trustee may Renounce. The bill deletes all provisions regarding the renouncing of trusteeship by a testamentary trustee. Earlier provisions pertaining to trust proceedings would cover these types of actions.

Removal of Trustees. The bill deletes the provisions regarding petitioning for removal of a trustee by any beneficiary, cotrustee, or other interested persons. Earlier provisions pertaining to trust proceedings would cover these types of actions.

Reported 4/20/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 980 A BILL TO BE ENTITLED AN ACT TO ALLOW JUDICIAL DISCRETION IN DETERMINING THE AMOUNT OF SUBROGATION OF EMPLOYERS' LIENS IN ACTIONS AGAINST THIRD PARTIES 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

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. [illegible] 980 DATE 4-20-99

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line s 17-18

( ) WHICH CHANGES THE TITLE

by deleting the words "whether based on accrued or prospective compensation,";

and on page 1, line 20, by adding the following after the word "employer.": "The judge may consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future in determining the appropriate amount of the employer's lien.";

and on page 1, line 23, by adding after the word "judgments" the words "or settlements".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 980*

Short Title: Workers' Comp./Third Party Actions. (Public)

Sponsors: Representative Baddour.

Referred to: Judiciary IV.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDICIAL DISCRETION IN DETERMINING THE AMOUNT OF SUBROGATION OF EMPLOYERS' LIENS IN ACTIONS AGAINST THIRD PARTIES UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained ~~which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier,~~ by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose, where the injured employee resides or the presiding judge before whom the cause of action is pending, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, whether based on accrued or prospective compensation, if any, of the employer's lien and the amount of cost of the third-party litigation to be shared between the employee and employer. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

Section 2. This act is effective when it becomes law and applies to judgments entered against third parties on or after that date pursuant to G.S. 97-10.2.

Reported 4/20/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 980*
Proposed Committee Substitute H980-PCSA130-SK

Short Title: Workers' Comp./Third Party Actions. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDICIAL DISCRETION IN DETERMINING THE AMOUNT OF SUBROGATION OF EMPLOYERS' LIENS IN ACTIONS AGAINST THIRD PARTIES UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained ~~which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier,~~ by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose, where the injured employee resides or the presiding judge before whom the cause of action is pending, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's lien and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge may consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future in determining the appropriate amount of the employer's lien. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

Section 2. This act is effective when it becomes law and applies to judgments or settlements entered against third parties on or after that date pursuant to G.S. 97-10.2.

HOUSE BILL 980:
Workers' Comp./Third Party Actions

BILL ANALYSIS

Committee: Judiciary IV
Date: April 20, 1999
Version: First Edition

Introduced by: Representative Baddour
Summary by: Esther Manheimer
Committee Counsel

CURRENT LAW: Under current law, employees receiving workers' compensation may proceed against a third party tortfeasor. The employer or workers' compensation carrier that is paying workers' compentation to the employee may place a lien on the settlement or judgment resulting from the lawsuit between the employee and a third party. Under G.S. 97-10.2(j), as interpreted by the North Carolina Supreme Court, a judge has authority "'to exercise discretion in determining or allocating the amount of the lien or disbursement [when] (1) a judgment [is] insufficient to compensate the subrogation claim of the workers' compensation insurance carrier [or the claim of the employer where the employer is self-insured] or (2) [there is] a settlement.'" Johnson v. Southern Indus. Constructors, 347 N.C. 530, 534, 495 S.E.2d 356 (1998), *citing*, Hieb v. Lowery, 344 N.C. 403, 409, 474 S.E.2d 323, 326 (1996). In cases where the judgment is sufficient to compensate the subrogation claim, judges have no discretion in determining the amount of the lien or disbursement and the judgment is disbursed in the following order: first to pay the court costs, second to pay the attorney's fees, third to reimburse the employer for compensation paid to the employee, and forth to the employee. In determining whether or not the judgment is sufficient to compensate the employer, the judge may not consider future benefits (workers' compensation) to be paid by the employer to the employee.

BILL ANALYSIS: House Bill 980 would allow judges to exercise their discretion in determining or allocating the amount of the lien or disbursement regardless of whether the judgement is sufficient or insufficient to compensate the subrogation claim. In addition, the bill would allow the judge to consider accrued or prospective compensation (workers' compensation) due the employee from the employer in the allocation of the judgment.

This act is effective when it becomes law and applies to judgments entered against third parties on or after that date pursuant to G.S. 97-10.2.

VISITOR REGISTRATION SHEET

JIV — 7:30 — 4-20-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chris Marks	AOC
Jeanne Bonds	AOC
Irene Wilson	AOC - GAL
AL DEITCH	DOA/DNIO
R.A. Laddenpoard	GAL volunteer
Christina Medlin	COVENANT W/ AOC's [illegible]
Bill Katt	Wyrick, Robbins / NC Bar Assoc.

AGENDA

JUDICIARY IV

10:00 a.m.

HB 114 Guardian Ad Litem/Attorneys	Rep. Hiatt	(re-refer to Approp.)
HB 1100 Removal/Resignation of Trustees	Rep. Haire	(motion)
HB 979 Modify Rights of Decedent's Spouse	Rep. Baddour	(John Hine present)

ANNOUNCE HB 1033 Appellate Judge Electoins will be heard at 7:30 a.m. tomorrow morning (Wednesday) instead of at l:00 this afternoon.

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 20, 1999 - 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, April 20, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, McMahan, Mosley, Pope, and Saunders.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 114 Guardian Ad Litem/Attorneys. Rep. Hiatt brought forward a proposed committee substitute and moved its adoption for purpose of discussion. Motion carried. After brief discussion, Rep. Culpepper moved for a favorable report to committee substitute and unfavorable report to original bill and recommendation that it be re-referred to Committee on Appropriations. Motion carried.

HB 1100 Removal/Resignation of Trustees. Rep. Haire sent forth an amendment and moved its adoption. Motion carried. After brief discussion, Rep. Haire moved for favorable report to the bill as amended to be put into a committee substitute and unfavorable report as to original bill. Motion carried and the committee substitute was given a favorable report.

HB 979 Modify Rights of Decedent's Spouse. Rep. Baddour, bill sponsor, asked Rep. Haire to take the chair while he explained the bill. He then recognized Mr. John Hine, his law partner and expert on the subject, to further explain the bill. Rep. Baddour sent forth Amendment #1 and moved for its adoption. Motion carried. He then sent forth Amendment #2 and moved for its adoption. Motion carried. After discussion by the committee, Rep. Baddour moved the bill as amended be placed in a committee substitute and given a favorable report and unfavorable report as to the original bill. Motion passed.

HB 1216 Juvenile Justice Technical Corrections. Rep. Baddour, bill sponsor, explained that this bill merely made some technical corrections in the current law. Rep. Bowie moved for a favorable report. Motion carried.

The meeting adjourned at 10:50 a.m.

Representative Phil Baddour
Chairman

Carolyn Coordes
Committee Assistant

Reported 4/20/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 114 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.

☐ 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

Reported 4/20/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 114
Proposed Committee Substitute H114-PCS2296-RG

Short Title: Guard. Ad Litem/Attys. (Public)

Sponsors:

Referred to:

February 22, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-601, as recodified by Section 6 of S.L. 1998-202, reads as rewritten:

"**§ 7B-601. Appointment and duties of guardian ad litem.**

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The juvenile is a party in all actions under this Subchapter. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate ~~at the end of two years.~~ when the permanent plan has been achieved for the juvenile and approved by the court. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights ~~through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of~~

~~the juvenile.~~ throughout the proceeding. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional ~~hearing;~~ hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) ~~The court may order the department of social services or the guardian ad litem to conduct follow-up investigations to ensure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met.~~ The court may ~~also~~ authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) ~~The court may grant the~~ The guardian ad litem has the authority to ~~demand~~ obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. ~~Neither the physician-patient privilege nor the husband-wife privilege~~ No privilege other than the attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law."

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

Reported 4/20/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1100 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

☐ 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

Passed

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1100 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Haire
Sen.)

1 moves to amend the bill on page 7, lines 31-44
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines. 31-4
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Reported 4/20/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1100
Proposed Committee Substitute H1100-PCS7199-LO

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"ARTICLE 3.

~~"Resignation, Removal, and Renunciation of Trustees.~~ "Trust Administration.

~~"§ 36A-22. Applicability of this Article.~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"§ 36A-22.1. Definitions.

As used in this Article:

(1) 'Beneficiary' means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer and (ii) any person entitled to enforce a charitable trust.

(2) 'Fiduciary' includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) 'Interested person' includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in a particular proceeding.

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

(5) 'Trust' includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, and 54B-129, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) 'Trustee' includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

~~"§ 36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"§ 36A-23.1. Court; jurisdiction of trusts.

(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this section, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;
(2) To review trustees' fees and review and settle interim or final accounts; and
(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court.

(b) To the extent that the procedures in this Article for proceedings before the clerk concerning the administration of trusts conflict with the procedures for proceedings heard by the clerk, the provisions of this Article control.

(c) A proceeding under this section does not result in continuing supervisory proceedings.

(d) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

(e) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

~~**"§ 36A-24. Petition; contents and verification.**~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"§ 36A-24.1. Trust proceedings; venue.

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides. Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(2) The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate trustee; or

(3) The usual place of business or residence of any of the cotrustees as agreed upon by the cotrustees.

~~"§ 36A-25. Parties; hearing; successor appointed.~~

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petitioner in the manner provided in this Article.~~

"§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state where the trust has its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

~~"§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"§ 36A-26.1. Trust proceedings; necessary parties.

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. The clerk shall issue the summons for the defendants, and except as provided in this Article, the procedure shall be the same as in other special proceedings. The clerk may order notification of additional persons. An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to answer the petition and to offer evidence against granting the petition. The clerk shall then proceed to hear and determine the matter.

"§ 36A-26.2. Waiver of notice.

An interested person, or a person representing an interested person as provided in G.S. 36A-26.3, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"§ 36A-26.3. When parties represented by others.

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. If the clerk finds that there is no conflict of interest between the interested person and the person representing the

interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. If the clerk finds that another party has an interest in the proceeding substantially identical to the interest of an unborn or unascertained person who is not otherwise represented, that party shall represent the unborn or unascertained person.

d. At any point in a proceeding, a clerk shall allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

(4) An order binding a person who represents an interested person binds the interested person.

Nothing in this section authorizes the disbursement of funds distributable to any person to those authorized to represent that person under this section.

"§ 36A-27. Appeal; stay effected by appeal.

Any party in interest may appeal from the decision of the clerk to the ~~judge at chambers,~~ superior court. ~~and in such event the procedure shall be the same as in other special proceedings as now provided by law.~~ If ~~the clerk allows the resignation, and~~ an appeal is taken from ~~his decision,~~ the decision of the clerk, such appeal shall ~~have the effect to~~ stay the judgment and order of the clerk until the cause is heard and determined by the ~~judge~~ superior court upon the appeal taken. To the extent that the procedure for an appeal from an order of the clerk concerning administration of a trust provided under this Article conflicts with the procedure for appeal from orders of the clerk in other matters, the provisions of this Article control.

"§ 36A-28. On appeal judge determines facts.

Upon an appeal taken from the clerk to the ~~judge,~~ superior court, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the appellate division.

"§ 36A-29. Final accounting before resignation.

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~**"§ 36A-30. Resignation effective on settlement with successor.**~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"§ 36A-31. ~~Court to appoint successor; when~~ When bond required.

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court,~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands

~~post-office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~"§ 36A-35. Removal of trustee.~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~"§ 36A-38. Powers of successor trustee.~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"§ 36A-40. Vesting of title.

A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~"§ 36A-41. Applicability.~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"§§ 36A-42 through 36A-46: Reserved for future codification purposes."

Section 2. This act becomes effective October 1, 1999, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established before or after that date.

Reported 4/20/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 979 A BILL TO BE ENTITLED AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 979

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

H979-ARG-001

Date _____ ,1999

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 2, lines ~~9-10~~ 9-10,
by deleting the words "Code, the North Carolina exemption from inheritance and estate tax pursuant to G.S. 105-3(10) and (11)," and substituting the word "Code".

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

#2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. First

H. B. No. 979 DATE

S. B. No. Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE

Rep.) Baddour
)
Sen.)

moves to amend the bill on page 2, line s 4-5

( ) WHICH CHANGES THE TITLE

by deleting those lines;

and on page 2, line 26,
by rewriting the line to read:
"reason of the decedent's death, other than
wrongful death proceeds;

SIGNED

ADOPTED FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 979

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors: Representatives Baddour; and Russell (Primary Sponsors).

Referred to: Judiciary IV.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal

descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Minimum Applicable Share. -- In no event shall the applicable share of the Total Net Assets be less than twenty-five thousand dollars ($25,000).

(d) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code, the North Carolina exemption from inheritance and estate tax pursuant to G.S. 105-3(10) and (11), or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation

shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the

personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any

Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds

that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated

and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall

promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

Section 6. G.S. 31A-1(b) reads as rewritten:

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an

elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters or administration.

2. Abstracting or passing upon title to property.

3. Handling litigation relating to claims by or against the estate or trust.

4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act becomes effective October 1, 1999, and applies to estates of decedents dying on or after that date.

Reported 4/20/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 979
Proposed Committee Substitute H979-PCS7200-RG

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation

shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the

personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any

Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds

that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated

and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall

promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

Section 6. G.S. 31A-1(b) reads as rewritten:

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an

elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters or administration.

2. Abstracting or passing upon title to property.

3. Handling litigation relating to claims by or against the estate or trust.

4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act becomes effective October 1, 1999, and applies to estates of decedents dying on or after that date.

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
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HB 979 MODIFY RIGHTS OF DECEDENT'S SPOUSE
April 1999

House Bill 979 makes changes to the existing law regarding a spouse's right of support after his or her mate dies. The purpose of the original law as well as this legislation is to ensure that spouses are treated fairly in the distribution of a decedent's property.

Types of Property Addressed in this Bill:

- "Probate" property is property that is designated in a will or is distributed under an intestacy statute (when person dies without a will).
- "Non-probate" property is property that passes outside of the will, such as life insurance policies with designated beneficiaries, property owned with joint-right-of-survivorship, IRAs, and annuities.

Current law: North Carolina has a "dissent statute" that gives a spouse a right *only* to the decedent's *probate property*. Today, the financial reality is that persons usually die having much more non-probate property than probate.
Proposed legislation: This bill replaces the dissent statute with an "elective share statute." This new law will give spouses a right to a share of both the decedent's *probate and non-probate property* ("Total Net Assets").

Current law: Under the current law, a surviving spouse who dissents from a will must prove he or she has the right to claim a share.
Proposed legislation: The elective share statute provides that a surviving spouse always has the right to claim an elective share.

Current law: The method for calculating the amount of property a spouse can claim is inconsistent with the method for determining whether dissent is available.
Proposed legislation: The calculation of the amount of the elective share is simply and uniformly calculated as the amount of the "Total Net Assets" allowed by the statute *minus* the amount of property already passing to the spouse (i.e. through a will, intestacy, or life-insurance). This one calculation replaces the two required in the current law, thereby enabling the statute to operate more consistently when applied.

Laura E. Hartsell, Assistant Director of Governmental Affairs
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EXPLANATION OF ELECTIVE SHARE STATUTE

1. Purpose of Bill. This statute modernizes and corrects the defects of the Dissent Statute. The present dissent statute, enacted in 1959, established the public policy that a decedent should leave his surviving spouse at least a modest amount of his estate. Generally, a person with two or more children must leave his spouse one-third of his estate. If that person were in a second marriage, it would be one-sixth.

2. Why is a change needed? The statute needs to be changed for two reasons:

a. In 1959, most of a person's property was probate property. Today, with retirement plans, joint bank accounts, IRAs, annuities, and life insurance, most of a person's estate is often non-probate. The 1959 language of the statute no longer accomplishes its original purpose.

b. The present statute is unworkable and yields some widely disparate results, regardless of one's views of spousal protection. Examples can be given whereby a surviving spouse gets much more, or much less, than the statute on its face would indicate. Estate practitioners have long been critical of the statute. The North Carolina Supreme Court has agreed with that assessment and asked for legislative change.

3. Summary of Provisions. The Act is complex, although not as badly as it seems for many of the provisions are procedural. The basic format of the statute is as follows:

a. Total Net Assets. The general thrust of the Act is that if a decedent had control over assets until death, then the assets should be counted as his assets. The definition of Total Net Assets is intended to determine those items upon which the decedent would be taxed for federal estate taxes. It would also include any large gifts that the decedent made on his deathbed, although smaller gifts, and any gift for which the spouse consented, would not be counted.

Exception. If H's parents set up a trust for H, and gave H a general power of appointment (i.e., for tax purposes) over the trust estate, it would not be included, because it was felt that H did not really provide these funds.

b. Applicable Percentage. The Act retains the same percentage mandates. A person with a spouse and two or more children should leave his spouse one-third. A spouse with one child or no children should leave his spouse one-half. This is the same as present law. A second spouse does not have to left as much. Generally, a second spouse will only get one-sixth.

c. Property Passing to Spouse. The Act states that the surviving spouse's share is reduced by any property she gets from either probate or non-probate sources. If the decedent has given large gifts to the surviving spouse during lifetime, the surviving spouse cannot then complain that she is not getting enough of the estate.

d. Spousal Protection Trusts. The Act anticipates there are valid reasons for a decedent not to leave assets to the survivor outright (i.e., the spouse is ill, aged, incapacitated, a spendthrift, a second spouse). The decedent is permitted to leave the share in trust. Present law does not permit this.

e. Procedural Provisions. Much of the Act is procedural. The present statute does not give much guidance as to how things are done. This Act gives some clear guidance as to the procedure, so that the outcome is more clearly predicted and more efficiently achieved. Present law gives the surviving spouse a "slice" of all assets. This Act allows the decedent to assure a special asset (i.e., farm, closely-held business) will go as he intended and the surviving spouse is only entitled to get a portion of its value, not the asset itself.

Reported 4/20/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1216 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE JUVENILE JUSTICE REFORM ACT OF 1998.

☒ 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 1216

Short Title: Juvenile Justice Technical Corrections. (Public)

Sponsors: Representative Baddour.

Referred to: Judiciary IV.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE JUVENILE JUSTICE REFORM ACT OF 1998.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2512(h), as enacted by S.L. 1998-202 and renumbered as G.S. 7B-2513(h) by the Codifier of Statutes, reads as rewritten:

"(h) Pending placement of a juvenile with the Office, the court may house a juvenile who has been adjudicated ~~guilty of a delinquent act~~ delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility."

Section 2. G.S. 7B-2603(a), as enacted by S.L. 1998-202, reads as rewritten:

"(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after the transfer hearing in the district court. ~~A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court.~~ The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if

an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense."

Section 3. G.S. 7B-3800, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-3800. Adoption of Compact.**

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in a form substantially as contained in this Article. It is the intent of the General Assembly that ~~Article 4~~ Article 37 of this Chapter shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this Compact. It is the intent of the General Assembly that Chapter 48 of the General Statutes shall govern the adoption of children within the boundaries of North Carolina.

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this Compact:

(a) 'Child' means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) 'Sending agency' means a party state officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) 'Receiving state' means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities of [or] for placement with private agencies or persons.

(d) 'Placement' means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any

institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(e) 'Appropriate public authorities' as used in Article III shall, with reference to this State, mean the Department of Health and Human Services and said agency shall receive and act with reference to notices required by Article III.

(f) 'Appropriate authority in the receiving state' as used in paragraph (a) of Article V shall, with reference to this State, means the Secretary.

(g) 'Executive head' as used in Article VII means the Governor.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date, and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this Compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this Compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state.

Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this Compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this Compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child's being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interests of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this Compact shall designate an officer who shall be general coordinator of activities under this Compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article VIII. Limitations.

This Compact shall not apply to: (a) the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This Compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this Compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this Compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this Compact shall be liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 4. G.S. 95-241(a), as amended by Section 7 of S.L. 1998-202, reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens ~~to:~~ to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:

a. Chapter 97 of the General Statutes.
b. Article 2A or Article 16 of this Chapter.
c. Article 2A of Chapter 74 of the General Statutes.
d. G.S. 95-28.1.
e. Article 16 of Chapter 127A of the General Statutes.
f. G.S. 95-28.1A.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.
(4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes."

Section 5. G.S. 120-216(1) reads as rewritten:

"(1) Study the needs of children and youth. This study shall include, but is not limited to:
a. Determining the adequacy and appropriateness of services:
1. To children and youth receiving child welfare services;
2. To children and youth in the juvenile court system; and
3. Provided by the Division of Social Services and ~~the Division of Youth Services of the Department of Health and Human Services.~~ the Office of Juvenile Justice.
b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.
c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.
d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.
e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible."

Section 6. G.S. 131D-10.4(3), as amended by Section 13(ii) of S.L. 1998-202, reads as rewritten:

"(3) Secure detention facilities as specified in ~~Article 40 of Chapter 7B~~ Article 3C of Chapter 147 of the General Statutes;"

Section 7. G.S. 143B-261 reads as rewritten:

"**§ 143B-261. Department of Correction -- duties.**

It shall be the duty of the Department to provide the necessary custody, supervision, and treatment to control and rehabilitate criminal offenders ~~and juvenile delinquents~~ and thereby to reduce the rate and cost of crime and delinquency."

Section 8. G.S. 143B-262 reads as rewritten:

"**§ 143B-262. Department of Correction -- functions.**

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

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

(1) The State Department of Correction and Commission of Correction,

~~(2) The State Board of Youth Development,~~

(3) The State Probation Commission,

(4) The State Board of Paroles,

(5) The Interstate Agreement on Detainers, and

(6) The Uniform Act for Out-of-State Parolee Supervision.

(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive Supervision. This program shall provide intensive supervision for probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5).

(d) The Department shall establish a Substance Abuse Program. This Program shall include an intensive term of inpatient treatment, normally four to six weeks, for alcohol or drug addiction in independent, residential facilities for approximately 100 offenders per facility."

Section 9. G.S. 143B-150.6(e) reads as rewritten:

"(e) Inter-agency fund transfers: The Department may allow the Division of Social Services, ~~the Division of Youth Services,~~ and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to use funds available to each Division to support family preservation services provided by the Division under the Program; provided that such use does not violate federal regulations pertaining to, or otherwise jeopardize the availability of federal funds."

Section 10. G.S. 143B-150.8(a)(1) reads as rewritten:

"(1) Provide guidance and advice to the Secretary in the development of a plan for the statewide implementation of an inter-agency family preservation services program whereby family-centered preservation services are available to all counties by July 1, 1995, through the coordinated efforts of the Division of Social ~~Services, Division of Youth Services,~~ Services and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 11. G.S. 143B-478, as amended by Section 4(aa) of S.L. 1998-202, reads as rewritten:

"§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 35 voting members and five nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, a representative of the Office of Juvenile Justice, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, ~~the Director of the Division of Youth Services, the Administrator for Juvenile Services of the Administrative Office of the Courts,~~ and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: a representative of the Office of Juvenile Justice, the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms;

seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 12. G.S. 153A-221.1, as amended by Section 13(nn) of S.L. 1998-202, reads as rewritten:

"**§ 153A-221.1. Standards and inspections.**

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. ~~Further, the legal responsibility of the Department of Health and Human Services is hereby expanded to give said Department the same legal responsibility as to the State-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 7B-4008.~~

The ~~Secretary of Health and Human Services~~ Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by ~~Article 40 of Chapter 7B~~ Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 13. This act becomes effective July 1, 1999.

HOUSE BILL 1216:
Juvenile Justice Technical Corrections

BILL ANALYSIS

Committee: Judiciary IV
Date: April 20, 1999
Version: First Edition

Introduced by: Representative Baddour
Summary by: Esther Manheimer
Committee Counsel

SUMMARY: House Bill 1216 makes technical corrections to the Juvenile Justice Reform Act of 1998.

BILL ANALYSIS:

Section 1. Changes the phrase "adjudicated guilty of a delinquent act" to "adjudicated delinquent for an offense". The latter phrase is used throughout the Act, and the correction was missed in the final version.

Section 2. Deletes one sentence that is inconsistent with the provisions in G.S. 7B-2603.

Section 3. Changes an incorrect reference.

Section 4. Makes a drafting style change.

Section 5. Deletes a reference to the "Division of Youth Services", which no longer exists, and replaces it with the "Office of Juvenile Justice".

Section 6. Changes an incorrect reference.

Sections 7 and 8. Deletes references to "juvenile delinquents" because juvenile delinquents have not been under the Department of Corrections since 1979. They are now under the Office of Juvenile Justice. Section 8 also deletes the reference to the "Board of Youth Development" because it has not existed in years.

Section 9. Deletes "Division of Youth Services" because it no longer exists.

Section 10. Deletes "Division of Youth Services" because it no longer exists.

Section 11. Deletes "Division of Youth Services" and the "Administrator for Juvenile Services of the Administrative Office of the Courts" because both no longer exist. The two entities have been consolidated into the Office of Juvenile Justice.

Section 12. Deletes references to entities that have been moved to the Office of Juvenile Justice, and corrects incorrect references.

This act becomes effective July 1, 1999.

VISITOR REGISTRATION SHEET

J. IV - 10:00
Name of Committee

4-20-94
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John C. Hinc	BADDOUR, PARKER & HINE GOLDSBORO
Laura Hartsell	NC Bar Association
John Phelps	NCLM
Nick Eaves	Loewen Group International Inc
Becky Street	PPAB
Alida Gregory	Poyner & Spruill
Priscilla Swindell	AARP
Lucius Pullen	ATTORNEY
David Elliott	NC DOT
Leanne Winner	NCSBA
Paul Stoch	NC Bankers

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 21, 1999

The House Committee on Judiciary IV met on Wednesday, April 21, 1999 at 7:30 a.m. in Room 421 of the Legislative Office Building. Representative Baddour presided. The other members present were: Representative(s) Haire, Vice Chairman; Thomas, Vice Chairman; Bowie, Culpepper, Earle, Jeffus, Justus, McMahan, Pope, and Saunders. Staff for the Committee, Tim Hovis and Esther Manheimer, was also present. The Visitor Registration Sheet indicates visitors present.

Chairman Baddour called the meeting to order and introduced the Pages assigned to the Committee.

The following bill was discussed:

HB 1033 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE INITIAL ELECTION OF AN APPELLATE JUDGE SHALL CONTINUE AS CURRENT, BUT SUBSEQUENT ELECTIONS FOR THAT JUSTICE OR JUDGE TO THE SAME OFFICE SHALL BE BY NONPARTISAN RETENTION ELECTION. Representative Culpepper, Sponsor, explained the bill. A summary of the first edition of the bill is attached.

In the discussion, Representative Pope expressed his interpretation and questioned the language regarding vacancies. Representative(s) Bowie and Justus asked for further explanation of nonpartisan retention elections and the number of appointees to the Supreme Court and the Court of Appeals.

Representative Culpepper introduced Justice Robert Orr, a member of the Supreme Court, and Judge Jack Lewis from the Court of Appeals, who spoke from personal experience on the need for reform in the method of selection or retention of Judges.

Representative Thomas expressed his opposition to the appointment of Judges.

Representative Haire expressed his comments and support of HB 1033 with a motion for a favorable report at the appropriate time.

Chairman Baddour announced that no vote would be taken at today's meeting and that HB 1033 would be placed on the agenda of the next meeting. The meeting adjourned at 8:15 a.m.

Representative Phil Baddour
Chairman

Jackie Hamby
Committee Assistant

J-IV
4-21-99
@ 7:30

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1033

Short Title: Appellate Judge Elections. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE INITIAL ELECTION OF AN APPELLATE JUDGE SHALL CONTINUE AS CURRENT, BUT SUBSEQUENT ELECTIONS FOR THAT JUSTICE OR JUDGE TO THE SAME OFFICE SHALL BE BY NONPARTISAN RETENTION ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Retention Elections.

"**§ 7A-4.1. Retention elections.**

(a) If the Chief Justice or an Associate Justice of the Supreme Court or a Judge of the Court of Appeals was appointed to that office, then the next election for that office shall be by partisan ballot as otherwise provided by this Chapter and Chapter 163 of the General Statutes.

(b) A Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals who was elected to that office at the most recent election, whether by partisan election or by retention election, who desires to continue in office shall be subject to approval by nonpartisan ballot at the general election immediately preceding the expiration of the term, by a majority of votes cast on the issue of the justice's or judge's retention. Voting in a retention election on the Chief Justice, Associate Justices, and Judges of the Appellate Division shall be the qualified voters of the whole State.

(c) A person subject to subsection (b) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year prior to the election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to December 15 of that year. If no retention notice is filed, or if it is filed and timely withdrawn, then a partisan election shall be held the next year to elect a successor.

(d) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(e) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(f) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective.

"**§ 7A-4.2. Failure to retain.**

If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or Judge of the Appellate Division, the office shall become vacant at the end of the term of office, the incumbent shall not hold over, and it shall be filled by appointment as provided by law until the next general election when a successor shall be elected for a full term as provided by G.S. 163-9.

"**§ 7A-4.3. Governor to issue commissions to justices and judges.**

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election."

Section 2. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Repealed by Session Laws 1973, c. 793, s. 56
(7) Ballot for constitutional amendments and other propositions submitted to the people
(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by

this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

All candidates in a partisan election for the Appellate Division shall appear on the same ballot."

Section 3. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~elected by the qualified voters of the State for terms of eight years.~~ elected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business."

Section 4. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.~~

~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the~~

~~additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.~~

~~Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.~~

The Court of Appeals shall consist of 12 judges, elected as provided in Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

Section 5. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of ~~candidacy~~ candidacy, including candidacy for retention election under G.S. 7A-4.1, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior court judge	One percent (1%) of the annual salary of the office sought

United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Section 6. This act is effective when it becomes law.

J-IV
4-21-99
7:30am

HOUSE BILL 1033:
Appellate Judge Elections

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Culpepper
Date:	April 17, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1033 provides for nonpartisan retention elections for justices of the Supreme Court and Judges of the Court of Appeals. After an initial election by partisan ballot as provided by existing law, justices and appellate judges who wish to continue in office at the expiration of their initial term would be elected by a statewide nonpartisan ballot.

BILL ANALYSIS: Section 16 of Article IV of the North Carolina Constitution provides that Justices of the Supreme Court and Judges of the Court of Appeals be elected by the voters for eight year terms. Chapter 163 of the General Statutes provides for the election of justices and appellate judges by partisan elections, in the same manner as other statewide elected officials.

House Bill 1033 would continue the practice of partisan elections for justices and appellate judges for their initial term in office. However, following this initial term, justices and appellate judges who wish to continue in office would be elected by a statewide, nonpartisan retention election. The retention elections would be placed at the top of the ballot, above all other elections. If the voters fail to approve the retention of the justice or judge, the office would be filled by appointment, as provided by existing law, until a successor is elected. (Section 19 of Article IV of the Constitution and G.S. 163-9 provide that vacancies on the Supreme Court and the Court of Appeals be filled by appointment by the Governor. The appointees hold office until the next election for members of the General Assembly occurring more than 60 days from the date of vacancy.)

House Bill 1033 also makes technical and conforming changes to the statutes.

VISITOR REGISTRATION SHEET

J IV
Name of Committee

4-21-99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chris Mabe	AOC
Jeanne Borden	AOC
Matt Osborne	AOC
Bob Orr	Supreme Court
Jack Levin	Court of Appeals
Doug Duncan	NC Forestry Assn.
Mike Ostin	N.C State AFL-CIO

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
April 21, 1999

The House Committee on Judiciary IV met on Wednesday, April 21, 1999 at 1:00 p.m. in Room 421 of the Legislative Office Building. Representative Thomas, Vice Chairman, presided. The other members present were: Representative(s) Baddour, Chairman; Haire, Vice Chairman; Bowie, Culpepper, Decker, Jeffus, Justus, McMahan, Pope, and Saunders. Staff for the Committee, Tim Hovis and Esther Manheimer, was also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

Chairman Baddour called the meeting to order and introduced the Pages assigned to the Committee. He then turned the meeting over to Vice Chairman Thomas who announced that Representative Baddour's HB 1224 would be discussed.

House Bill 1224, A BILL ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW was explained by Representative Baddour, Sponsor. HB 1224 would expand the area in which magistrates and clerks of superior court who are licensed to practice law have power. A bill analysis is attached for the record.

A committee substitute for HB 1224 was offered and Representative Decker made a motion for the adoption of the committee substitute for the purpose of discussion. The motion carried. (Committee Substitute attached) Representative Baddour offered amendment #1 and moved for its adoption for the purpose of discussion. The motion carried. (AMENDMENT #1 ATTACHED)

Representative Decker questioned the parental consent language of the bill. District Court Judge Keever of Cumberland County was recognized for comments. There were additional questions raised by Representative Bowie and Representative Haire regarding a fiscal note, administrative duties, and other clarifying language.

Representative Baddour offered amendment #2 and moved for the adoption thereof. The motion carried and the amendment #2 was adopted.

Representative Saunders made a motion that the amendments be rolled into a committee substitute for HB 1224 and that the committee substitute be given a favorable report, unfavorable to the original bill, but at this point Representative Baddour requested that no vote be taken at this meeing in order that Representative Haire and Representative Culpepper could further discuss the bill in the amended form.

The meeting was adjourned at 2:00 p.m.

Representative Phil Baddour
Chairman

Jackie Hamby
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1224 DATE _____

S. B. No. _____ Amendment No. #1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE yes H1224-PCSSK-001

(Rep.) Baddour
Sen.)

1 moves to amend the bill on page 3, line 2

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "contempt".

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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. Proposed Comm. Sub.

H. B. No. 1224 DATE _____

S. B. No. _____ Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Baddour
)
Sen.)

moves to amend the bill on page 4, lines 1-3

( ) WHICH CHANGES THE TITLE

by deleting those lines; and by renumbering the remaining subsections accordingly

and on page 6, lines 9-11, by deleting those lines; and by renumbering the remaining subsections accordingly.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1224 APR 14 99

HOUSE PRINCIPAL CLERK

J-IV
4-21-99
1:00 pm

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

H **D**

HOUSE DRH7143*-LL015B(1.22)

Short Title: Expand Magistrates' Authority. (Public)

Sponsors: Representative Baddour.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;
(5) To grant bail before trial for any noncapital offense;
(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;
(7) To conduct an initial appearance as provided in G.S. 15A-511; and
(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.
(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:
(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;
(2) To accept binding waivers of counsel in criminal contempt cases."

Section 2. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:
(1) To administer oaths;
(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;
(3) When authorized by the chief district judge, to take depositions and examinations before trial;
(4) To issue subpoenas and capiases valid throughout the county;
(5) To take affidavits for the verification of pleadings;
(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;
(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
(8) To take acknowledgments of instruments, as provided in G.S. 47-1;
(9) To perform the marriage ceremony, as provided in G.S. 51-1;

(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in civil actions within the monetary limits determined by the Chief Justice of the Supreme Court;
(2) To issue temporary restraining orders and preliminary injunctions in civil cases within the magistrate's jurisdiction;
(3) To grant uncontested divorces;
(4) To determine and issue orders establishing child support and issue show cause orders in child support proceedings;
(5) To order blood tests in paternity cases and take acknowledgements of paternity;
(6) To determine and issue orders for the emancipation of minors;
(7) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110;
(8) To accept binding waivers of counsel in civil contempt cases; and
(9) To hear, decide, and enter judgment in any civil action with the consent of the parties."

Section 3. G.S. 15A-1115 reads as rewritten:

"(a) Appeal of District Court Decision. -- A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~ court or before a magistrate pursuant to G.S. 7A-273(b)(1), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

Section 4. This act is effective when it becomes law.

CJ-IV
4-21-99
1:00 pm

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

adopted
Amended

H D

HOUSE BILL 1224*
Proposed Committee Substitute: H1224-PCSSK-001
Attention: line numbers may change after adoption.

Short Title: Expand Magist./Clerk of Ct Authority. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS OF SUPERIOR COURT WHO ARE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes,

and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;

(2) To accept binding waivers of counsel in criminal contempt cases."

Section 2. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;

(8) To take acknowledgments of instruments, as provided in G.S. 47-1;

(9) To perform the marriage ceremony, as provided in G.S. 51-1;

(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and

(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in civil actions within the amount in controversy for the district court division as provided in G.S. 7A-243;

(2) To issue temporary restraining orders and preliminary injunctions in civil cases within the magistrate's jurisdiction and powers;

(3) To give judgment of absolute divorce in favor of the plaintiff pursuant to G.S. 50-10, but only in actions in which:

a. The only claim asserted in the plaintiff's complaint is a claim for absolute divorce;

b. The complaint and summons were served on the defendant personally, or service of the complaint and summons were accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1); and

c. No answer or other responsive pleading is filed within the time provided by law or the only responsive pleading admits all the allegations of the complaint.

(4) To determine and issue orders establishing child support and issue show cause orders in child support proceedings;

(5) To order blood tests in paternity cases and take acknowledgements of paternity;

(6) To determine and issue orders for the emancipation of minors;

(7) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110; and

(8) To accept binding waivers of counsel in civil contempt cases."

Section 3. G.S. 7A-103 reads as rewritten:

"**§ 7A-103. Authority of clerk of superior court.**

(a) The clerk of superior court is authorized to:

(1) Issue subpoenas to compel the attendance of any witness residing or being in the State, or to compel the production of any document or paper, material to any inquiry in his court.

(2) Administer oaths, and to take acknowledgment and proof of the execution of all instruments or writings.

(3) Issue commissions to take the testimony of any witness within or without the State.

(4) Issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties.

(5) Enforce all lawful orders and decrees, by execution or otherwise, against those who fail to comply therewith or to execute lawful process. Process may be issued by the clerk, to be executed in any county of the State, and to be returned before him.

(6) Certify and exemplify, under seal of his court, all documents, papers or records therein, which shall be received in evidence in all the courts of the State.

(7) Preserve order in this court, punish criminal contempts, and hold persons in civil contempt; subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.

(8) Adjourn any proceeding pending before him from time to time.

(9) Open, vacate, modify, set aside, or enter as of a former time, decrees or orders of his court.

(10) Enter default or judgment in any action or proceeding pending in his court as authorized by law.

(11) Award costs and disbursements as prescribed by law, to be paid personally, or out of the estate or fund, in any proceeding before him.

(12) Compel an accounting by magistrates and compel the return to the clerk of superior court by the person having possession thereof, of all money, records, papers, dockets and books held by such magistrate by virtue or color of his office.

(13) Grant and revoke letters testamentary, letters of administration, and letters of trusteeship.

(14) Appoint and remove guardians and trustees, as provided by law.

(15) Audit the accounts of fiduciaries, as required by law.

(16) Exercise jurisdiction conferred on him in every other case prescribed by law.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the clerk of superior court in civil and criminal actions, a clerk of superior court who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;
(2) To accept binding waivers of counsel in criminal contempt cases;
(3) To hear, decide, and enter judgment in civil actions within the amount in controversy for the district court division as provided in G.S. 7A-243;
(4) To issue temporary restraining orders and preliminary injunctions in civil cases within the magistrate's jurisdiction and powers;
(5) To give judgment of absolute divorce in favor of the plaintiff pursuant to G.S. 50-10, but only in actions in which:
a. The only claim asserted in the plaintiff's complaint is a claim for absolute divorce;
b. The complaint and summons were served on the defendant personally, or service of the complaint and summons were accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1); and
c. No answer or other responsive pleading is filed within the time provided by law or the only responsive pleading admits all the allegations of the complaint.
(6) To determine and issue orders establishing child support and issue show cause orders in child support proceedings;
(7) To order blood tests in paternity cases and take acknowledgements of paternity;
(8) To determine and issue orders for the emancipation of minors;
(9) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110; and
(10) To accept binding waivers of counsel in civil contempt cases."

Section 4. G.S. 7A-180 reads as rewritten:

"**§ 7A-180. Functions of clerk of superior court in district court matters.**

(a) The clerk of superior court:
(1) Has and exercises all of the judicial powers and duties in respect of actions and proceedings pending from time to time in the district court of his county which are now or hereafter conferred or

imposed upon him by law in respect of actions and proceedings pending in the superior court of his county;

(2) Performs all of the clerical, administrative and fiscal functions required in the operation of the district court of his county in the same manner as he is required to perform such functions in the operation of the superior court of his county;

(3) Maintains, under the supervision of the Administrative Office of the Courts, an office of uniform consolidated records of all judicial proceedings in the superior court division and the district court division of the General Court of Justice in his county. Those records shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court and all other records required by law to be maintained. The form and procedure for filing, docketing, indexing, and recording shall be as prescribed by the Administrative Officer of the Courts notwithstanding any contrary statutory provision as to the title and form of the record or as a method of indexing;

(4) Has the power to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility for the types of offenses specified in G.S. 7A-273(2) in accordance with the schedules of offenses promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fine or penalty and costs;

(5) Has the power to issue warrants of arrest valid throughout the State, and search warrants valid throughout the county of the issuing clerk;

(6) Has the power to conduct an initial appearance in accordance with Chapter 15A, Article 24, Initial Appearance, and to fix conditions of release in accordance with Chapter 15A, Article 26, Bail;

(7) Continues to exercise all powers, duties and authority theretofore vested in or imposed upon clerks of superior court by general law, with the exception of jurisdiction in juvenile matters; and

(8) Has the power to accept written appearances, waivers of trial and pleas of guilty to violations

of G.S. 14-107 when restitution, including service charges and processing fees allowed under G.S. 14-107, is made, the amount of the check is two thousand dollars ($2,000) or less, and the warrant does not charge a fourth or subsequent violation of this statute, and, in such cases, to enter such judgments as the chief district judge shall direct and, forward the amounts collected as restitution to the appropriate prosecuting witnesses and to collect the costs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(c), effective July 15, 1992.

(b) In addition to the functions assigned in subsection (a) of this section, a clerk of superior court who is licensed to practice law in this State, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge, has the additional authority to perform those functions provided in G.S. 7A-103(b)."

Section 5. G.S. 50-10 reads as rewritten:

"**§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.**

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading.

(e) As used in this section, the terms 'judge' and 'court' include the magistrate and clerk of superior court."

Section 6. G.S. 15A-1115 reads as rewritten:

"(a) Appeal of District Court Decision. -- A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~ court or before a magistrate pursuant to G.S. 7A-273(b)(1) or before a clerk of superior court pursuant to G.S. 7A-103(b)(1), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

Section 7. G.S. 7A-253 reads as rewritten:

"**§ 7A-253. Infractions.**

Except as provided in ~~G.S. 7A-271(d),~~ G.S. 7A-271(d) and G.S. 7A-103(b)(1), original, exclusive jurisdiction for the adjudication and disposition of infractions lies in the district court division."

Section 8. This act is effective when it becomes law and applies to actions by magistrates and clerks of superior court on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H amended adopted D

HOUSE BILL 1224*
Proposed Committee Substitute: H1224-PCSSK-002
Attention: line numbers may change after adoption.

Short Title: Expand Magist. Authority. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

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(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes,

and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;

(2) To accept binding waivers of counsel in criminal contempt cases."

Section 2. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;

(8) To take acknowledgments of instruments, as provided in G.S. 47-1;

(9) To perform the marriage ceremony, as provided in G.S. 51-1;

(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and

(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in civil actions within the amount in controversy for the district court division as provided in G.S. 7A-243;

(2) To issue temporary restraining orders and preliminary injunctions in civil cases within the magistrate's jurisdiction and powers;

(3) To give judgment of absolute divorce in favor of the plaintiff pursuant to G.S. 50-10, but only in actions in which:

a. The only claim asserted in the plaintiff's complaint is a claim for absolute divorce;

b. The complaint and summons were served on the defendant personally, or service of the complaint and summons were accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1); and

c. No answer or other responsive pleading is filed within the time provided by law or the only responsive pleading admits all the allegations of the complaint.

(4) To determine and issue orders establishing child support and issue show cause orders in child support proceedings;

(5) To order blood tests in paternity cases and take acknowledgements of paternity;

(6) To determine and issue orders for the emancipation of minors;

(7) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110; and

(8) To accept binding waivers of counsel in civil contempt cases."

Section 3. G.S. 50-10 reads as rewritten:

"**§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.**

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading.

(e) As used in this section, the terms 'judge' and 'court' include the magistrate."

Section 4 G.S. 15A-1115 reads as rewritten:

"(a) Appeal of District Court Decision. -- A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~ court or before a magistrate pursuant to G.S. 7A-273(b)(1), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

Section 5. This act is effective when it becomes law and applies to actions by magistrates on or after that date.

J. IV
4-21-99
1:00 pm

HOUSE BILL 1224:
Expands Magistrates' Authority

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representative Baddour
Date:	April 21, 1999	**Summary by:**	Esther Manheimer
Version:	First Edition		Committee Counsel

BILL ANALYSIS: House Bill 1224 would expand the areas in which **magistrates and clerks of superior court who are licensed to practice law** have power. If assigned by the chief district court judge, and subject to the limitations imposed by that judge, a magistrate and clerk of court licensed to practice law have the authority to:

- Hear, decide, and enter judgment in all infraction cases.
- Accept binding waivers of counsel in criminal contempt cases.
- Hear, decide, and enter judgment in civil actions where the amount in controversy is $10,000 or less.
- Issue temporary restraining orders and preliminary injunctions in civil cases.
- Give judgment of absolute divorce if certain criteria regarding the case are met.
- Determine and issue orders for child support and issue show cause orders in child support proceedings.
- Order blood test in paternity cases and take acknowledgments of paternity.
- Determine and issue orders for emancipation of minors.
- Authorize in forma pauperis divorce actions by prisoners.
- Accept binding waivers of counsel in civil contempt cases.

This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JTV
Name of Committee

4-21-99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Robert A Moody	DMV ENFORCEMENT
Lesa U Dill	DMV-Traffic Records Section
David Simmons	20A, PA
SAM JOHNSON	ATTY
DOUG DUNCAN	NC Forestry ASSOC.
Judge Beth Keever	Chief Judges
Matt Osborne	AOC
Jeanne Bonds	AOC

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 22, 1999 - 7:30 a.m.

The House Committee on Judiciary IV met on Thursday, April 22, 1999 in Room 421 LOB at 7:30 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Jeffus, Justus, McMahan, Mosley, Pope and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order and called for consideration of the following bills:

HB 786 Commercial Felony Death by Vehicle. Rep. Haire, bill sponsor, explained the bill. He sent forth a proposed committee substitute and moved its adoption for purpose of discussion. Motion carried. After brief discussion and remarks by Doug Duncan of the N.C. Forestry Service, Rep. McMahan moved for a favorable report as to committee substitute and unfavorable report as to original bill. Motion passed.

HB 162 1999 Technical Corrections. Rep. Culpepper, bill sponsor, explained the bill. He sent forth a proposed committee substitute and moved its adoption for purpose of discussion. Motion carried. Bly Hall of the General Statutes Commission answered questions and Tim Hovis, Staff Attorney, made some clarifying remarks. Rep. Mosley moved for a favorable report as to committee substitute and unfavorable report as to original bill. Motion passed.

HB 1224 Expand Magistrates' Authority. Rep. Baddour, bill sponsor, asked Rep. Thomas to take the chair while he explained his bill. He sent forth a proposed committee substitute and moved its adoption for purpose of discussion. Motion carried. Rep. Baddour explained the proposed committee substitute and offered an amendment. He then moved for adoption of the amendment, which passed. After brief discussion, Rep. Haire moved for a favorable report to the committee substitute as amended and unfavorable report as to original bill. Motion passed.

HB 1033 Appellate Judge Elections. Rep. Culpepper, bill sponsor, was recognized to explain the bill. He asked Gerry Cohen to make some comments regarding the constitutional issues. After these remarks and questions from the committee, it was decided to hold this bill for further study. No vote was taken.

The meeting adjourned at 8:30 a.m.

Representative Phillip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

Reported 4/23/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 786 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE.

☐ 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.

☐ 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 786

Short Title: Commercial Felony Death By Vehicle. (Public)

Sponsors: Representatives Haire; Luebke and Hensley.

Referred to: Judiciary IV.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. -- A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Felony Death by Vehicle While Operating a Commercial Motor Vehicle. -- A person commits the offense of felony death by vehicle while operating a commercial motor vehicle if he unintentionally causes the death of another person while doing all the following which are the proximate cause of death:

(1) Being engaged in the violation of any State law applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

(2) Operating a Class A or a Class B motor vehicle with three or more axles with a GVWR of at least 26,001 pounds.

~~(a2)~~ (a3) Misdemeanor Death by Vehicle. -- A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired

driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(b) Punishments. -- Felony death by vehicle is a Class G felony. Felony death by vehicle while operating a commercial motor vehicle is a Class H felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. -- No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

Section 2. This act becomes effective December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H786-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 786
THIS IS A DRAFT 19-APR-99 10:10:33
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Commercial Felony Death By Vehicle. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE FOR CERTAIN OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. -- A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or ~~G.S.~~ 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Felony Death by Commercial Motor Vehicle. -- A person commits the offense of felony death by commercial motor vehicle if he unintentionally causes the death of another person while operating a Class A or a Class B motor vehicle with a GVWR of at least 26,001 pounds while being engaged in any of the following offenses which are the proximate cause of death:

(1) Passing stopped school bus, G.S. 20-217.

(2) Reckless driving, G.S. 20-140.
(3) Following too closely, G.S. 20-152.
(4) Driving on wrong side of the road, G.S. 20-146, 20-147, or 20-165.1.
(5) Illegal passing, G.S. 20-148, 20-149, 20-150, 20-150.1 or G.S. 20-151.
(6) Running through stop sign or red light, G.S. 20-158.
(7) Speeding more than 15 miles per hour more than the speed limit or over 80 miles per hour, G.S. 20-141(j1).
(8) Failing to yield right-of-way, G.S. 20-155, 20-156, and 20-158.1.
(9) Failure to stop for siren, G.S. 20-157.
(10) Driving through safety zone, G.S. 20-160.
(11) Speeding in school zone in excess of the posted school zone limit, G.S. 20-141.1.
(12) Illegal crossing or approach of railroad tracks and intersections, G.S. 20-142.1 through 20-142.5.

~~(a2)~~ (a3) Misdemeanor Death by Vehicle. -- A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1 or 20-138.2, and commission of that violation is the proximate cause of the death.

(b) Punishments. -- ~~Felony death by vehicle~~ A violation of subsection (a1) of this section is a Class G felony. A violation of subsection (a2) of this section is a Class H felony. ~~Misdemeanor death by vehicle~~ A violation of subsection (a3) of this section is a Class 1 misdemeanor.

(c) No Double Prosecutions. -- No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

Section 2. This act becomes effective December 1, 1999.

of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	4
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	2
	1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Public drunk within a vehicle
Possession of alcoholic beverages
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that

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hall be cancelled.
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ccumulates as many as four
mmediately following reinstate
uspension or revocation, the D
ttend a conference regarding
Division may also afford any
any as seven points or any lice
of four points within a three-
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pon an opportunity to attend a
y the Division and, upon the
taken at the clinic, three poi
censee's conviction record; pro
points shall be made on behalf
period.
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herein, the first such suspensio
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subsequent suspension shall r
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sion under this subsection an
suspension or revocation under
pensions or revocations shall
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exceed one year may be substit
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of this section. Any violation
period shall result in a suspen
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under this subsection during a
violation of the condition of
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this section, the Division shal
writing and upon his request
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Probation shall mean any

Chapter 19
Chapter 19A
Chapter 20

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 786
Proposed Committee Substitute H786-PCS1225-RG

Short Title: Commercial Felony Death By Vehicle. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ENHANCED PUNISHMENTS FOR FELONY DEATH BY VEHICLE WHILE OPERATING A COMMERCIAL VEHICLE FOR CERTAIN OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. -- A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Felony Death by Commercial Motor Vehicle. -- A person commits the offense of felony death by commercial motor vehicle if he unintentionally causes the death of another person while operating a Class A or a Class B motor vehicle with a GVWR of at least 26,001 pounds while being engaged in any of the following offenses which are the proximate cause of death:

(1) Passing stopped school bus, G.S. 20-217.

(2) Reckless driving, G.S. 20-140.

(3) Following too closely, G.S. 20-152.

(4) Driving on wrong side of the road, G.S. 20-146, 20-147, or 20-165.1.

(5) Illegal passing, G.S. 20-148, 20-149, 20-150, 20-150.1, or 20-151.

(6) Running through stop sign or red light, G.S. 20-158.
(7) Speeding more than 15 miles per hour more than the speed limit or over 80 miles per hour, G.S. 20-141(j1).
(8) Failing to yield right-of-way, G.S. 20-155, 20-156, and 20-158.1.
(9) Failure to stop for siren, G.S. 20-157.
(10) Driving through safety zone, G.S. 20-160.
(11) Speeding in school zone in excess of the posted school zone limit, G.S. 20-141.1.
(12) Illegal crossing or approach of railroad tracks and intersections, G.S. 20-142.1 through G.S. 20-142.5.

~~(a2)~~ (a3) Misdemeanor Death by Vehicle. -- A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1 or G.S. 20-138.2, and commission of that violation is the proximate cause of the death.

(b) Punishments. -- ~~Felony death by vehicle~~ A violation of subsection (a1) of this section is a Class G felony. A violation of subsection (a2) of this section is a Class H felony. ~~Misdemeanor death by vehicle~~ A violation of subsection (a3) of this section is a Class 1 misdemeanor.

(c) No Double Prosecutions. -- No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

Section 2. This act becomes effective December 1, 1999.

Reported 4/23/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 162 A BILL TO BE ENTITLED AN ACT TO MAKE TECHINCAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ 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 162

Short Title: 1999 Technical Corrections. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-56 reads as rewritten:

"**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29,~~ G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at

Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H162-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 162
THIS IS A DRAFT 21-APR-99 20:13:58
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1999 Technical Corrections. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-56 reads as rewritten:

"**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the

expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29,~~ G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Section 2. G.S. 32A-14.1 reads as rewritten:

"**§ 32A-14.1. Gifts under power of attorney.**

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and ~~2422(a)~~ 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after ~~the effective date of this section.~~ October 1, 1995."

Section 3. G.S. 122C-57(d) through (f) read as rewritten:

"(d) Each voluntarily admitted client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney,~~ attorney has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid ~~advanced~~ advance instruction for mental health treatment ~~or an attorney-in-fact named pursuant to a valid instruction for mental health treatment~~ in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid ~~advanced~~ advance instruction ~~or~~ for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation.~~ attorney."

Section 4. G.S. 122C-211(f1) reads as rewritten:

"(f1) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in ~~G.S. 122C-72(c)~~ G.S. 122C-72(4) at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction for mental health treatment may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When a health care power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable."

Section 5. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance

with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. [Chapter] 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court; and

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such schools.

(10) Contract for services as necessary to carry out the functions of the Board."

Section 6. G.S. 74D-5(a) reads as rewritten:

"(a) In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Investigate and approve individual applicants to be licensed or registered according this Chapter;

(6) Deny, suspend, or revoke any license issued or to be issued under this Chapter to any applicant or licensee who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation of such license shall be in accordance with Chapter 150B of this General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. 5A-21 et seq. for acts occurring in matters pending before the Board which would constitute civil contempt if the acts occurred in an action pending in court.

(8) Contract for services as necessary to carry out the functions of the Board."

Section 7. G.S. 74C-6 reads as rewritten:

"**§74C-6. Position of Administrator created.**

The position of Administrator of the Private Protective Services Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the private protective services industry to ensure compliance with the law in all aspects."

Section 8. G.S. 74D-5.1 reads as rewritten:

"**§ 74D-5.1. Position of Administrator created.**

The position of Administrator of the Alarm Systems Licensing Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the alarm systems industry to insure compliance with the law in all aspects. The Administrator may issue a temporary grant or denial of a request for registration subject to final action by the Board at its next regularly scheduled meeting."

Section 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 162
Proposed Committee Substitute H162-PCS6181-RG

Short Title: 1999 Technical Corrections. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-56 reads as rewritten:

"**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29,~~ G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at

Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Section 2. G.S. 32A-14.1 reads as rewritten:

"**§ 32A-14.1. Gifts under power of attorney.**

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and ~~2422(a)~~ 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after ~~the effective date of this section.~~ October 1, 1995."

Section 3. G.S. 122C-57(d) through (f) read as rewritten:

"(d) Each voluntarily admitted client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney,~~ attorney has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid ~~advanced~~ advance instruction for mental health treatment ~~or an attorney-in-fact named pursuant to a valid instruction for mental health treatment~~ in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid ~~advanced~~ advance instruction ~~or~~ for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, or a health care agent named

pursuant to a valid health care power of ~~attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation.~~ attorney."

Section 4. G.S. 122C-211(f1) reads as rewritten:

"(f1) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in ~~G.S. 122C-72(c)~~ G.S. 122C-72(4) at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction for mental health treatment may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When a health care power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable."

Section 5. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment

pursuant to G.S. [Chapter] 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court; ~~and~~

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such ~~schools.~~ schools; and

(10) Contract for services as necessary to carry out the functions of the Board."

Section 6. G.S. 74D-5(a) reads as rewritten:

"(a) In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Investigate and approve individual applicants to be licensed or registered according this Chapter;

(6) Deny, suspend, or revoke any license issued or to be issued under this Chapter to any applicant or licensee who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation of such license shall be in accordance with Chapter 150B of this General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. 5A-21 et seq. for acts occurring in matters pending before the Board which would constitute civil contempt if the acts occurred in an action pending in ~~court.~~ court; and

(8) Contract for services as necessary to carry out the functions of the Board."

Section 7. G.S. 74C-6 reads as rewritten:

"**§ 74C-6. Position of Administrator created.**

The position of Administrator of the Private Protective Services Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the private protective services industry to ensure compliance with the law in all aspects."

Section 8. G.S. 74D-5.1 reads as rewritten:

"**§ 74D-5.1. Position of Administrator created.**

The position of Administrator of the Alarm Systems Licensing Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the alarm systems industry to insure compliance with the law in all aspects. The Administrator may issue a temporary grant or denial of a request for registration subject to final action by the Board at its next regularly scheduled meeting."

Section 9. This act is effective when it becomes law.

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: April 21, 1999

RE: House Bill 162 (1999 Technical Corrections)

General Comments

This bill makes corrections of a technical nature to various sections of the General Statutes. The amendments recommended by the General Statutes Commission correct typographical, redlining, and other obvious drafting errors, conform terminology, and correct statutory references.

Specific Comments

Section 1. This section amends G.S. 32A-14.1 to correct a typographical error in a citation to the Internal Revenue Code of 1986 and to replace the phrase "the effective date of this section" with the actual effective date.

Section 2. This section amends G.S. 122C-57 to correct various errors in subsections (d) through (f). G.S. 122C-57 was amended in the 1998 legislative session by S.L. 1998-198, s. 5, and there were a number of typographical and other technical errors in the amendments. In subsection (d), the word "has" was inadvertently redlined out and is being reinserted. In subsections (e) and (f), the word "advanced" should have been "advance", and there should have been conforming amendments deleting references to an attorney-in-fact named pursuant to a valid advance instruction. The incorrect word and the missing conforming amendment are being fixed in both subsections. In subsection (f), the word "or" should have been "for", and this correction is being made.

Section 3. This section amends G.S. 122C-211(f1) to correct a typographical error in a citation and to insert the complete term "advance instruction for mental health treatment".

Section 4. This section amends G.S. 143-56 to correct a typographical error in the citation to G.S. 143-129.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1224 DATE 4/22/99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Baddour
Sen.)

moves to amend the bill on page 3, line 41

( ) WHICH CHANGES THE TITLE

by inserting between the words "in" and "civil" the words "nonjury".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1224*
Proposed Committee Substitute: H1224-PCSSK-002
Attention: line numbers may change after adoption.

Short Title: Expand Magist. Authority. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes,

and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;

(2) To accept binding waivers of counsel in criminal cases."

Section 2. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;

(8) To take acknowledgments of instruments, as provided in G.S. 47-1;

(9) To perform the marriage ceremony, as provided in G.S. 51-1;

(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and

(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in civil actions within the amount in controversy for the district court division as provided in G.S. 7A-243;

(2) To give judgment of absolute divorce in favor of the plaintiff pursuant to G.S. 50-10, but only in actions in which:
a. The only claim asserted in the plaintiff's complaint is a claim for absolute divorce;
b. The complaint and summons were served on the defendant personally, or service of the complaint and summons were accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1); and
c. No answer or other responsive pleading is filed within the time provided by law or the only responsive pleading admits all the allegations of the complaint.
(3) To determine and issue orders establishing child support and issue show cause orders in child support proceedings;
(4) To order blood tests in paternity cases and take acknowledgements of paternity;
(5) To determine and issue orders for the emancipation of minors;
(6) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110; and
(7) To accept binding waivers of counsel in civil contempt cases."

Section 3. G.S. 50-10 reads as rewritten:

"**§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.**

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines

that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading.

(e) As used in this section, the terms 'judge' and 'court' include the magistrate."

Section 4 G.S. 15A-1115 reads as rewritten:

"(a) Appeal of District Court Decision. -- A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~ court or before a magistrate pursuant to G.S. 7A-273(b)(1), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

Section 5. This act is effective when it becomes law and applies to actions by magistrates on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1224*
Proposed Committee Substitute H1224-PCS3379-SK

Short Title: Expand Magist. Authority. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant

to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;

(2) To accept binding waivers of counsel in criminal cases."

Section 2. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
(8) To take acknowledgments of instruments, as provided in G.S. 47-1;
(9) To perform the marriage ceremony, as provided in G.S. 51-1;
(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in nonjury civil actions within the amount in controversy for the district court division as provided in G.S. 7A-243;
(2) To give judgment of absolute divorce in favor of the plaintiff pursuant to G.S. 50-10, but only in actions in which:
a. The only claim asserted in the plaintiff's complaint is a claim for absolute divorce;
b. The complaint and summons were served on the defendant personally, or service of the complaint and summons was accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1); and
c. No answer or other responsive pleading is filed within the time provided by law or the only responsive pleading admits all the allegations of the complaint;
(3) To determine and issue orders establishing child support and issue show cause orders in child support proceedings;
(4) To order blood tests in paternity cases and take acknowledgments of paternity;
(5) To determine and issue orders for the emancipation of minors;
(6) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110; and
(7) To accept binding waivers of counsel in civil contempt cases.

(c) Appeal from judgment of a magistrate under subsection (b) of this section shall be as provided for in Article 19 of Chapter 7A of the General Statutes."

Section 3. G.S. 50-10 reads as rewritten:

"**§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.**

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually

denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading.

(e) As used in this section, the terms 'judge' and 'court' include the magistrate."

Section 4. G.S. 15A-1115 reads as rewritten:

"(a) Appeal of District Court Decision. -- A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~ court or before a magistrate pursuant to G.S. 7A-273(b)(1), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

Section 5. This act is effective when it becomes law and applies to actions by magistrates on or after that date.

HOUSE BILL 1224:
Expands Magistrates' Authority

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representative Baddour
Date:	April 22, 1999	**Summary by:**	Esther Manheimer
Version:	Proposed Committee Substitute (H1224-PCSSK-001)		Committee Counsel

BILL ANALYSIS: House Bill 1224 would expand the areas in which **magistrates who are licensed to practice law** have power. If assigned by the chief district court judge, and subject to the limitations imposed by that judge, a magistrate licensed to practice law has the authority to:

- Hear, decide, and enter judgment in all infraction cases.
- Accept binding waivers of counsel in criminal cases.
- Hear, decide, and enter judgment in civil actions where the amount in controversy is $10,000 or less.
- Give judgment of absolute divorce in certain divorce cases.
- Determine and issue orders for child support and issue show cause orders in child support proceedings.
- Order blood test in paternity cases and take acknowledgments of paternity.
- Determine and issue orders for emancipation of minors.
- Authorize in forma pauperis divorce actions by prisoners.
- Accept binding waivers of counsel in civil contempt cases.

This act is effective when it becomes law and applies to actions by magistrates on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1033

Short Title: Appellate Judge Elections. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE INITIAL ELECTION OF AN APPELLATE JUDGE SHALL CONTINUE AS CURRENT, BUT SUBSEQUENT ELECTIONS FOR THAT JUSTICE OR JUDGE TO THE SAME OFFICE SHALL BE BY NONPARTISAN RETENTION ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Retention Elections.

"**§ 7A-4.1. Retention elections.**

(a) If the Chief Justice or an Associate Justice of the Supreme Court or a Judge of the Court of Appeals was appointed to that office, then the next election for that office shall be by partisan ballot as otherwise provided by this Chapter and Chapter 163 of the General Statutes.

(b) A Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals who was elected to that office at the most recent election, whether by partisan election or by retention election, who desires to continue in office shall be subject to approval by nonpartisan ballot at the general election immediately preceding the expiration of the term, by a majority of votes cast on the issue of the justice's or judge's retention. Voting in a retention election on the Chief Justice, Associate Justices, and Judges of the Appellate Division shall be the qualified voters of the whole State.

(c) A person subject to subsection (b) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year prior to the election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to December 15 of that year. If no retention notice is filed, or if it is filed and timely withdrawn, then a partisan election shall be held the next year to elect a successor.

(d) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(e) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(f) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective.

"**§ 7A-4.2. Failure to retain.**

If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or Judge of the Appellate Division, the office shall become vacant at the end of the term of office, the incumbent shall not hold over, and it shall be filled by appointment as provided by law until the next general election when a successor shall be elected for a full term as provided by G.S. 163-9.

"**§ 7A-4.3. Governor to issue commissions to justices and judges.**

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election."

Section 2. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Repealed by Session Laws 1973, c. 793, s. 56
(7) Ballot for constitutional amendments and other propositions submitted to the people
(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by

this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

All candidates in a partisan election for the Appellate Division shall appear on the same ballot."

Section 3. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~elected by the qualified voters of the State for terms of eight years.~~ elected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business."

Section 4. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.~~

~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the~~

~~additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.~~

~~Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.~~

The Court of Appeals shall consist of 12 judges, elected as provided in Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

Section 5. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of ~~candidacy~~ candidacy, including candidacy for retention election under G.S. 7A-4.1, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior court judge	One percent (1%) of the annual salary of the office sought

United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Section 6. This act is effective when it becomes law.

HOUSE BILL 1033:
Appellate Judge Elections

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Culpepper
Date:	April 17, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1033 provides for nonpartisan retention elections for justices of the Supreme Court and Judges of the Court of Appeals. After an initial election by partisan ballot as provided by existing law, justices and appellate judges who wish to continue in office at the expiration of their initial term would be elected by a statewide nonpartisan ballot.

BILL ANALYSIS: Section 16 of Article IV of the North Carolina Constitution provides that Justices of the Supreme Court and Judges of the Court of Appeals be elected by the voters for eight year terms. Chapter 163 of the General Statutes provides for the election of justices and appellate judges by partisan elections, in the same manner as other statewide elected officials.

House Bill 1033 would continue the practice of partisan elections for justices and appellate judges for their initial term in office. However, following this initial term, justices and appellate judges who wish to continue in office would be elected by a statewide, nonpartisan retention election. The retention elections would be placed at the top of the ballot, above all other elections. If the voters fail to approve the retention of the justice or judge, the office would be filled by appointment, as provided by existing law, until a successor is elected. (Section 19 of Article IV of the Constitution and G.S. 163-9 provide that vacancies on the Supreme Court and the Court of Appeals be filled by appointment by the Governor. The appointees hold office until the next election for members of the General Assembly occurring more than 60 days from the date of vacancy.)

House Bill 1033 also makes technical and conforming changes to the statutes.

CONSTITUTIONAL ISSUES IN HOUSE BILL 1033

I have been asked whether the provisions of House Bill 1033, providing for retention elections for the appellate bench, are constitutional. I have identified three specific issues:

Q 1) Is the retention election in fact an "election" within the meaning of Article IV, Section 16 which requires that appeallate justices and judges be elected by the qualified voters.

A 1) After reading numerous cases, legal encyclopedias, and legal dictionaries, I came to the conclusion that the question here is a political one, not a legal one. In my opinion, an election is a mechanism whereby voters make a choice. A retention election in fact is a choice by voters. The fact that the choice more closely reflects the one-party election system popular outside the western world does not mean it violates the North Carolina Constitution. In my opinion, the choice of the election format is to be decided by the legislative branch, not the judicial.

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Q 2) To the extent the retention election is supposed to meet Article IV, Sec. 16 requirement that the Appellate Judges be elected, then why does this not require compliance with Article VI, Sec. 6, that every qualified voter shall be eligible for election to office? In short, does not a statutory provision for a "retention" election, disqualify everyone but the incumbent for seeking election to the office that is required by Article IV, Sec. 16?

A 2) In my opinion, this constitutional provision is not violated. In fact, any person is eligible for election to office. The fact that the provisions of House Bill 1033 provide that only one person at a time is to be voted on in a retention election does not mean that ANYONE was ineligible to be that person.

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Q 3) Article IV, Section 16 also states that judges "shall hold office for terms of eight years AND shall hold office until their successors are ELECTED and qualified." But, HB 1033, on page 2, beginning at line 21, says after an eight year term ends, and the incumbent fails in his retention "election," that he shall "not holdover", that a "vacancy" is created (even though his term has expired and failed to be re-elected) and that his immediate successor is appointed to a vacancy, rather than elected. Is this proposed statute contrary to the Constitution?

A 3) In my opinion, the provisions of House Bill 1033 which provide that the defeated judge do not hold over DO violate the provisions of Article IV, Section 16. In drafting House Bill 1033, I had consulted only the provisions of Article VI, Section 10, which states "In the absence of any contrary provision, all officers in the State ... shall hold their positions until ... their successors are chosen." The provisions of House Bill 1033 do comport with Article VI, Section 10, because the anti-holdover provisions are a "contrary provision". I was not cognizant of the language of Article VI, Section 10, which MANDATES that judges holdover until their successors are elected. Thus, to be constitutional, a defeated judge would still hold office until the next election. This does not mean that this problem can not be remedied within the basic concept of House Bill 1033. The bill could be amended to say that a defeated judge would remain in office until the general election held two years later, at which time a new justice or judge could be elected for an eight-year term by an open election. Or, in the alternative, the General Assembly could schedule a special election if desired, because unlike the language of Article II, Section 8 which requires elections for the General Assembly to be held in even-numbered years, and the language of Article II, Section 7 which likewise requires council of State elections t o be held at the same time as legislative elections, Article IV, Section 16 does not specify WHEN judicial elections are held. Whether or not the amending House Bill 1033 to allow defeated judges to continue in office for some fixed period is acceptable is again a political rather than a legal question.

VISITOR REGISTRATION SHEET

Judiciary IV — 7:30 April 22, 1999
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Doug Duncan	NC Forestry Assoc. - Raleigh
Rosa U. Gill	DMV
P. Ody Hall	General Statutes Commission
Tom Lambeth	AOC
Mike Allen	NC State AFLCIO
B. E. Booth	DOJ
Doc Hoggard	DOJ TAS
Bill Scoggin	NC Bar Assoc.
Pat Dorer	Conference of D.As.
Betty Miller	Child Support Enforcement
Elizabeth Haines	Child Support Enforcement
Gerald K. Robbins	Dept of Justice
Shannon Ransone	DSS
Chris Mann	AOC
Dave A Moody	DMV ENFORCEMENT

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302

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 22, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, April 22, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Earle, Jeffus, Justus, McMahan, Pope , and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order and called for consideration of the following bills:

HB 14 Cemetery Consumer Protection. Rep. Allred, bill sponsor, was unable to attend the meeting. Rep. Thomas, Chairman of the Subcommittee this bill has been considered by, reported that the Subcommittee met with all interested parties and worked out a proposed committee substitute that all have agreed to. Rep. Thomas then moved for adoption of the proposed committee substitute for purpose of discussion. Motion carried. Rep. Earle explained the proposed committee substitute. Rep. Bowie moved for favorable report as to committee substitute and unfavorable report as to original bill. Motion passed.

HB 302 Enhance Child Support Enforcement. Rep. Culpepper, bill sponsor, was recognized to explain the bill. He sent forth a proposed committee substitute and moved for its adoption for purpose of discussion. Motion carried. After a brief explanation by Rep. Culpepper, Rep. Bowie moved for a favorable report as to committee substitute and unfavorable as to original bill. Motion passed.

HB 1263 Recognize Federally Issued Licenses. Rep. Thomas, bill sponsor, was recognized to explain the bill. He indicated that children of military personnel under 18, who have a federally issued drivers license, should be able to get a license when they become a resident of this State. Rep. McMahan moved for a favorable report and motion carried.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

Reported 4/22/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 14 A BILL TO BE ENTITLED AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES.

☐ 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 14*
Proposed Committee Substitute: H14-PCSSK-002
Attention: line numbers may change after adoption.

Short Title: Cemetery Consumer Protection. (Public)

Sponsors:

Referred to:

February 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-66(d) reads as rewritten:

"(d) Any contract for the sale of personal property ~~and/or~~ or ~~services~~ services, whether preneed or at-need, shall ~~state~~ disclose ~~separate costs~~ the following:

(1) A specific description of each item of personal property purchased and the cost for each item of personal ~~property,~~ property and for each act of installation or other service required by the contract, ~~and for each other item of services included in the contract.~~ including any costs for the right of interment, entombment, or inurnment;

(2) Specification of whether opening and closing of a grave space, mausoleum space, or columbarium space is included in the contract, and, if not, the current prices for opening and closing and a statement in bold lettering that these prices are subject to change;

(3) Any requirements or costs relating to memorial markers, including any obligations of the grave space, mausoleum space, or columbarium space owner if the owner desires to have an outside provider provide the marker and any costs relating to having an outside provider provide and place a marker;

(4) A statement describing, in language that is readable and understandable by a person of average intelligence, experience, and education, the nature of the property right in the grave space, mausoleum space, or columbarium space;

(5) A statement that a preneed purchaser has, pursuant to G.S. 65-66(m), 30 days following the execution of a contract to cancel the contract by giving written notice to the seller and that the seller may cancel the contract, upon default by the purchaser, by giving written notice to the purchaser. The statement shall include (i) whether or not the purchaser may transfer the purchaser's rights in the property to another person or organization and (ii) whether or not the seller will refund all or part of the purchase price and the conditions under which a refund will be made, after the 30-day period, including the purchaser moving from one locale to another;

(6) If the seller knows that the grave space, mausoleum space, or columbarium space has been previously sold by the cemetery company to a purchaser and the space was used in the final disposition interment, entombment, or inurnment of human remains and has since returned to the inventory of available spaces, a statement that the space has been used for a prior interment, entombment, or inurnment;

(7) A statement identifying the person or legal entity which owns the cemetery or provides the property or services, including whether the entity is wholly or partially owned by another corporation; and

(8) A statement of whether the purchaser may obtain property and services from an outside provider and if the purchaser elects to do so, a statement disclosing any costs to the purchaser, or fees or assessments charged to the outside provider for such property or services, and notice that these costs, assessments, or fees are subject to change.

The statement shall also include the current prices for such property and services, and state in bold lettering that the prices are subject to change."

Section 2. G.S. 65-53 is amended by adding a new subdivision to read:

"(9) The Commission shall keep records of the complaints received and the action taken by the Commission on each complaint. These records shall be kept for at least five years after receipt of the complaint."

Section 3. G.S. 65-53 reads as rewritten:

"**§ 65-53. Powers.**

In addition to other powers conferred by this Article, the Cemetery Commission shall have the following powers and duties:

(1) The administrator shall be appointed by the Governor upon recommendation of the Cemetery Commission. The compensation of the administrator and such other personnel as is necessary to operate the Commission is subject to the provisions of Chapter 126 of the General Statutes of North Carolina. The Commission is authorized and empowered to employ such staff, including legal counsel, as may be necessary.

(2) To examine a cemetery company's records when a person applies for a change of control of the company.

(3) Investigate, upon its own initiative or upon a verified complaint in writing, the actions of any person engaged in the business or acting in the capacity of a licensee under this Article. The license of a licensee may be revoked or suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, where the licensee in performing or attempting to perform any of the acts specified in this Article has been guilty of:

a. Failing to pay the fees required herein;

b. Failing to make any reports required by this Article;

c. Failing to remit to the care and maintenance trust fund, merchandise trust fund, or preconstruction trust fund the required amounts;

d. Making any substantial misrepresentation;

e. Making any false statement of a character likely to influence or persuade;
f. A continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salesmen;
g. Violating any provision of this Article or rule promulgated by the Commission; ~~or~~
h. Violating the disclosure requirements in G.S. 65-66(d); or
i. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(3a) Investigate, upon its own initiative or upon a verified complaint in writing, whether a particular contract for the sale of personal property or services, whether preneed or at-need, contains the disclosures required pursuant to G.S. 65-66(d) and to adopt temporary rules pursuant to Chapter 150B of the General Statutes, if necessary, to implement this subdivision until such time as permanent rules are adopted.

(4) In all proceedings under this Article for the revocation or suspension of licenses, the provisions of Chapter 150B of the General Statutes shall be applicable.

(5) At such time as the Commission finds it necessary it may bring an action in the name of the State in the court of the county in which the place of business is located against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper; provided, that before any such action is brought the Commission shall give the cemetery at least 20 days' notice in writing, stating the alleged violation and giving the cemetery an opportunity within the 20-day period to cure the violation. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, the court shall have the power and jurisdiction to impound

and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this Article through or by means of the use of said property and business. The Commission may institute proceedings against the cemetery or its officers, whereafter an examination, pursuant to this Article, a shortage in the care and maintenance trust fund, merchandise trust fund or mausoleum and belowground crypts preconstruction trust fund is discovered, to recover said shortage.

(6) Whenever any special additional audit or examination of a licensee's premises, facilities, books or records is necessary because of the failure of the licensee to comply with the requirements imposed in this Article or by the rules and regulations of the Commission, to charge a fee based on the cost of the special examination or audit, taking into consideration the salary of any employees involved in the special audit or examination and any expenses incurred.

(7) Promulgate rules and regulations requiring licensees to file with the Commission plans and specifications for the minimum quality of any product sold. The sale of any product for which plans and specifications required by the rules and regulations have not been filed or sale of any product of a lesser quality than the plans and specifications filed with the Commission is a violation of this Article.

(8) When the Commission finds that failure by a licensee to maintain a cemetery properly has caused that cemetery to be a public nuisance or a health or safety hazard, the Commission may bring an action for injunctive relief, against the responsible licensee, in the superior court of the county in which the cemetery or any part thereof is located."

Section 4. The Department of Justice through the Office of the Attorney General, Consumer Protection Division, shall ensure that private, for-profit cemetery companies operate within Article 1 of Chapter 75 of the General Statutes, titled

"Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade practices laws.

Section 5. This act becomes effective January 1, 2000, and is applicable to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 14*
Proposed Committee Substitute H14-PCS4230-SK

Short Title: Cemetery Consumer Protection. (Public)

Sponsors:

Referred to:

February 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-66(d) reads as rewritten:

"(d) Any contract for the sale of personal property ~~and/or~~ or ~~services~~ services, whether preneed or at-need, shall ~~state~~ disclose ~~separate costs~~ the following:

(1) A specific description of each item of personal property purchased and the cost for each item of personal ~~property,~~ property and for each act of installation or other service required by the contract, ~~and for each other item of services included in the contract.~~ including any costs for the right of interment, entombment, or inurnment;

(2) Specification of whether opening and closing of a grave space, mausoleum space, or columbarium space is included in the contract, and, if not, the current prices for opening and closing and a statement in bold lettering that these prices are subject to change;

(3) Any requirements or costs relating to memorial markers, including any obligations of the grave space, mausoleum space, or columbarium space owner if the owner desires to have an outside

provider provide the marker and any costs relating to having an outside provider provide and place a marker;

(4) A statement describing, in language that is readable and understandable by a person of average intelligence, experience, and education, the nature of the property right in the grave space, mausoleum space, or columbarium space;

(5) A statement that a preneed purchaser has, pursuant to G.S. 65-66(m), 30 days following the execution of a contract to cancel the contract by giving written notice to the seller and that the seller may cancel the contract, upon default by the purchaser, by giving written notice to the purchaser. The statement shall include (i) whether or not the purchaser may transfer the purchaser's rights in the property to another person or organization and (ii) whether or not the seller will refund all or part of the purchase price and the conditions under which a refund will be made, after the 30-day period, including the purchaser moving from one locale to another;

(6) If the seller knows that the grave space, mausoleum space, or columbarium space has been previously sold by the cemetery company to a purchaser and the space was used in the final disposition interment, entombment, or inurnment of human remains and has since returned to the inventory of available spaces, a statement that the space has been used for a prior interment, entombment, or inurnment;

(7) A statement identifying the person or legal entity which owns the cemetery or provides the property or services, including whether the entity is wholly or partially owned by another corporation; and

(8) A statement of whether the purchaser may obtain property and services from an outside provider and if the purchaser elects to do so, a statement disclosing any costs to the purchaser, or fees or assessments charged to the outside provider for such property or services, and notice that these costs, assessments, or fees are subject to change. The statement shall also include the current prices for such property and services, and state in bold lettering that the prices are subject to change."

Section 2. G.S. 65-53 is amended by adding a new subdivision to read:

"(9) The Commission shall keep records of the complaints received and the action taken by the Commission on each complaint. These records shall be kept for at least five years after receipt of the complaint."

Section 3. G.S. 65-53 reads as rewritten:

"§ 65-53. Powers.

In addition to other powers conferred by this Article, the Cemetery Commission shall have the following powers and duties:

(1) The administrator shall be appointed by the Governor upon recommendation of the Cemetery Commission. The compensation of the administrator and such other personnel as is necessary to operate the Commission is subject to the provisions of Chapter 126 of the General Statutes of North Carolina. The Commission is authorized and empowered to employ such staff, including legal counsel, as may be necessary.

(2) To examine a cemetery company's records when a person applies for a change of control of the company.

(3) Investigate, upon its own initiative or upon a verified complaint in writing, the actions of any person engaged in the business or acting in the capacity of a licensee under this Article. The license of a licensee may be revoked or suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, where the licensee in performing or attempting to perform any of the acts specified in this Article has been guilty of:

a. Failing to pay the fees required herein;

b. Failing to make any reports required by this Article;

c. Failing to remit to the care and maintenance trust fund, merchandise trust fund, or preconstruction trust fund the required amounts;

d. Making any substantial misrepresentation;

e. Making any false statement of a character likely to influence or persuade;

f. A continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salesmen;

g. Violating any provision of this Article or rule promulgated by the Commission; ~~or~~

h. Violating the disclosure requirements in G.S. 65-66(d); or

i. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(3a) Investigate, upon its own initiative or upon a verified complaint in writing, whether a particular contract for the sale of personal property or services, whether preneed or at-need, contains the disclosures required pursuant to G.S. 65-66(d) and to adopt temporary rules pursuant to Chapter 150B of the General Statutes, if necessary, to implement this subdivision until such time as permanent rules are adopted.

(4) In all proceedings under this Article for the revocation or suspension of licenses, the provisions of Chapter 150B of the General Statutes shall be applicable.

(5) At such time as the Commission finds it necessary it may bring an action in the name of the State in the court of the county in which the place of business is located against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper; provided, that before any such action is brought the Commission shall give the cemetery at least 20 days' notice in writing, stating the alleged violation and giving the cemetery an opportunity within the 20-day period to cure the violation. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, the court shall have the power and jurisdiction to impound and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this Article through or by means of the use of said property and business. The Commission may institute proceedings against the cemetery or its officers, whereafter an examination, pursuant to this Article, a shortage in the care and maintenance trust fund, merchandise trust fund or mausoleum and belowground crypts preconstruction trust fund is discovered, to recover said shortage.

(6) Whenever any special additional audit or examination of a licensee's premises, facilities, books or records is necessary because of the failure of the licensee to comply with the requirements imposed in this Article or by the rules and regulations of the Commission, to charge a fee based on the cost of the special examination or audit, taking into consideration the salary of any employees involved in the special audit or examination and any expenses incurred.

(7) Promulgate rules and regulations requiring licensees to file with the Commission plans and specifications for the minimum quality of any product sold. The sale of any product for which plans and specifications required by the rules and regulations have not been filed or sale of any product of a lesser quality than the plans and specifications filed with the Commission is a violation of this Article.

(8) When the Commission finds that failure by a licensee to maintain a cemetery properly has caused that cemetery to be a public nuisance or a health or safety hazard, the Commission may bring an action for injunctive relief, against the responsible licensee, in

the superior court of the county in which the cemetery or any part thereof is located."

Section 4. The Department of Justice through the Office of the Attorney General, Consumer Protection Division, shall ensure that private, for-profit cemetery companies operate within Article 1 of Chapter 75 of the General Statutes, titled "Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade practices laws.

Section 5. This act becomes effective January 1, 2000, and is applicable to contracts entered into on or after that date.

HOUSE BILL 14:
Cemetery Protection

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representatives Allred, Earle and Sexton
Date:	April 22, 1999		
Version:	First Edition	**Summary by:**	Esther Manheimer Committee Counsel

SUMMARY: House Bill 14 would expand the Cemetery Commission's powers, and would require that certain disclosures be made in each preneed and at-need contract. House Bill 14 would also require the Cemetery Commission to keep certain records.

BILL ANALYSIS:

Disclosures Required in each Contract (e.g. preneed and at-need).
Section 1. Amends G.S. 65-66(d) and would add a list of disclosures required to be included in each contract for the sale of personal property or services (e.g. preneed and at-need contracts). The required disclosures are as follow:

1. An itemized **list of personal property and services purchased and their cost** (required to be disclosed under current law).
2. **Whether the opening and closing of a grave space is included** (if not, then a list of prices for this service).
3. **Requirements relating to memorial markers** (including requirements for using an outside provider).
4. **Statement regarding the nature of the property right.**
5. Statement that preneed **purchasers have 30 days to cancel their contract** and that the seller may cancel upon default of the purchaser. Also, statement must include whether purchaser's rights are transferable and refund policies.
6. If the **grave space was previously used and if the seller is aware of the previous use**, a statement to that effect.
7. **Statement identifying the owner** of the cemetery or the services provider.
8. **A statement of whether the purchaser may use and outside provider** and fees assessed against the outside provider.

Cemetery Commission Record Keeping Required.
Section 2. Amends G.S. 65-53 by adding a new subdivision. This section would require the Cemetery Commission to keep records of complaints received and actions taken.

Expand Authority of the Cemetery Commission.

Section 3. Amends G.S. 65-53 to expand the powers and duties of the Cemetery Commission to include: the power to revoke or suspend a person's license to operate a cemetery for violation of the disclosure requirements listed in section 1; and the power to investigate whether a contract (e.g. a preneed or at-need contract) contains certain disclosures. Those disclosures are listed in section 2.

Consumer Protection Division of the Attorney General's Office to Ensure Chapter 75 Enforced.

Section 4. States that the Consumer Protection Division of the Attorney General's Office will ensure that Article 1 of Chapter 75 is enforced against private, for-profit cemetery companies. (Chapter 75, Article 1 deals with unfair and deceptive trade practices, etc.)

Section 5. This act becomes effective January 1, 2000, and is applicable to contracts entered into on or after that date.

BACKGROUND: House Bill 14 is a study commission bill recommended by the Committee on Cemetery Issues.

Reported 4/22/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 302 A BILL TO BE ENTITLED AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT 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

H 1

HOUSE BILL 302

Short Title: Enhance Child Support Enforce./AB. (Public)

Sponsors: Representatives Culpepper; Mosley and Gardner.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-132(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of ~~paternity,~~ paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the recision and to include in the order specific findings of fact that the request for recision was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders recision and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of recision to the State Registrar of Vital

Statistics. Upon receipt of an order of recision, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. The mother shall not be excused from making the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

Section 2. G.S. 110-142.2(b), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(b) Upon finding that the individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court ~~may~~ shall enter an order instituting any one or more of the sanctions as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any court-ordered payment plan under this subsection shall require the obligor to extinguish the delinquency within a period not to exceed 10 years and to make an immediate initial

payment representing at least five percent (5%) of the total delinquency or five hundred dollars ($500.00), whichever is greater. Any ~~such stay~~ stay of an order under this subsection shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order."

Section 3. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20."

Section 4. G.S. 52C-5-501(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from the North Carolina Employment Security Commission, an income-withholding order issued in another state may be sent to the Employment Security Commission without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the Employment Security Commission shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order. The Employment Security Commission shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

Section 5. G.S. 110-136.2(f) reads as rewritten:

"(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Employment Security Commission and payment shall be made by the Employment Security Commission directly to the Department of Health and Human Services pursuant to G.S. ~~96-17.~~ 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human ~~Services,~~ Services or to another state under G.S. 52C-5-501, the Employment Security Commission is exempt from the provisions of G.S. 110-136.8."

Section 6. The General Statutes are amended by adding a new section to read:

"**§ 110-139.3. High-volume, automated administrative enforcement in interstate cases (AEI).**

Upon request of another state, the Department of Health and Human Services shall use automated data processing to search State databases and determine if information is available regarding a parent who owes a child support obligation and

shall seize identified assets using the same techniques as used in intrastate cases. Any request by another state to enforce support orders shall certify the amount of each obligor's debt and that appropriate due process requirements have been met by the requesting state with respect to each obligor. The Department of Health and Human Services shall likewise transmit to other states requests for assistance in enforcing support orders through high-volume, automated administrative enforcement where appropriate."

Section 7. G.S. 108A-69, as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"**§ 108A-69. Employer obligations.**

(a) As used in this section and in G.S. 108A-70:

(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; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of Chapter 58 of the General Statutes, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of Chapter 58 of the General Statutes; ~~and means~~ a group health plan, as defined in Section 607(1) of the Employee Retirement Income Security Act of ~~1974.~~ 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an ~~employer doing business in this State,~~ employer, the employer:

(1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Health and Human Services in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.

(3) May not disenroll or eliminate coverage of the child unless:

a. The employer is provided satisfactory written evidence that:

1. The court or administrative order is no longer in effect; or
2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or

b. The employer has eliminated family health benefit plan coverage for all of its employees.

(4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

Section 8. G.S. 58-51-115(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

(1) 'Health benefit plan' means any 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; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of this Chapter; ~~and means~~ a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of ~~1974.~~ 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes."

Section 9. G.S. 15A-1344.1(a) reads as rewritten:

"(a) When the court requires, as a condition of supervised or unsupervised probation, that a defendant support his children, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply. If child support is to be paid through income withholding, the payments shall be made in accordance with G.S. 110-139(f)."

Section 10. G.S. 50-13.9(b) reads as rewritten:

"(b) After entry of such an order by the court, the clerk of superior court shall transmit child support payments that are made to the clerk in IV-D cases to the

Department of Health and Human Services for appropriate distribution. Pursuant to G.S. 110-139(f), amounts withheld by employers in IV-D and in non-IV-D cases shall be sent directly from the employer to the State Child Support Collection and Disbursement Unit for disbursement to the custodial parent or other party entitled to receive them, unless a court order requires otherwise. In ~~all other cases,~~ non-IV-D cases in which wage withholding is not in effect, the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise."

Section 11. G.S. 50-13.9(b2) reads as rewritten:

"(b2) In a non-IV-D case:

(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. In non-IV-D cases subject to income withholding, the State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D income-withholding cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.

(2) The clerk of court shall maintain all official records in the case.

(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received."

Section 12. G.S. 110-136.8(b), as amended by Section 1 of S.L. 1998-17 and Section 7 of S.L. 1998-176, reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the ~~clerk of superior court or~~ State ~~collection and disbursement unit,~~ Child Support Collection and Disbursement Unit, as specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the ~~clerk of court,~~ State Child Support Collection and Disbursement Unit, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the State collection and disbursement unit;
(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;
(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State collection and disbursement unit in a non-IV-D case, in writing:
a. If there are one or more orders of child support withholding for the obligor;
a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;
b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
c. Of the payor's inability to comply with the withholding for any reason; and
(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 13. G.S. 110-136.8(d) reads as rewritten:

"(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to ~~each clerk of superior court~~ the State Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligor's disposable income."

Section 14. G.S. 110-136.9 reads as rewritten:

"**§ 110-136.9. Payment of withheld funds.**

In IV-D ~~cases,~~ cases and in non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding, when required by federal or State law or regulations or by court order, the ~~clerk of superior court~~ State Child Support Collection and Disbursement Unit shall ~~transmit~~ distribute payments received from ~~payors to the Department of Health and Human Services for appropriate distribution.~~ payors. In all other cases, unless a court order requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent."

Section 15. Section 25 of Article I of the Constitution of North Carolina reads as rewritten:

"**Sec. 25. Right of jury trial in civil cases.**

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and ~~inviolable.~~ inviolable, except in civil cases in which paternity is contested."

Section 16. The amendment set out in Section 15 of this act shall be submitted to the qualified voters of the State at the general election in November of 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] YES [ ] NO

Shall the State of North Carolina amend the Constitution of North Carolina to allow the parties' right to a jury in all cases except in the adjudication of paternity in a civil action."

Section 17. If a majority of votes cast on the question are in favor of the amendment set out in Section 15 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendments become effective January 1, 2001. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 18. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H302-PCSLY-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 302
THIS IS A DRAFT. APRIL 14, 1999
ATTENTION: LINE NUMBER MAY CHANGE AFTER ADOPTION

Short Title: Enhance Child Support Enforce./AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-132(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of ~~paternity,~~ paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the recision and to include in the order specific

findings of fact that the request for recision was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders recision and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of recision to the State Registrar of Vital Statistics. Upon receipt of an order of recision, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of

the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. The mother shall not be excused from making the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

Section 2. G.S. 110-142.2(b), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(b) Upon finding that the individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. If an individual is adjudicated to be in civil or criminal contempt for a third or subsequent time for failure to comply with a child support order, the court shall enter an order instituting any one or more of the sanctions as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any court-ordered payment plan under this subsection shall require the individual to extinguish the delinquency within a reasonable period of time. In determining the amount to be applied to the delinquency, the court shall consider the amount of the debt and the individual's financial ability to pay. The payment shall not exceed the limits under G.S. 110-136.6(b). The individual shall make an immediate initial payment representing at least five percent (5%) of the total delinquency or five hundred dollars ($500.00), whichever is less. Any ~~such~~ stay of an order under this subsection shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order."

Section 3. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to

the opposing party, that the child has not graduated or attained the age of 20."

Section 4. G.S. 52C-5-501(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from the North Carolina Employment Security Commission, an income-withholding order issued in another state may be sent to the Employment Security Commission without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the Employment Security Commission shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order. The Employment Security Commission shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

Section 5. G.S. 110-136.2(f) reads as rewritten:

"(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Employment Security Commission and payment shall be made by the Employment Security Commission directly to the Department of Health and Human Services pursuant to G.S. ~~96-17.~~ 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human ~~Services,~~ Services or to another state under G.S. 52C-5-501, the Employment Security Commission is exempt from the provisions of G.S. 110-136.8."

Section 6. The General Statutes are amended by adding a new section to read:

"§ 110-139.3. High-volume, automated administrative enforcement in interstate cases (AEI).

Upon request of another state, the Department of Health and Human Services shall use automated data processing to search State databases and determine if information is available regarding a parent who owes a child support obligation and shall seize identified assets using the same techniques as used in intrastate cases. Any request by another state to enforce support orders shall certify the amount of each obligor's debt and that appropriate due process requirements have been met by the requesting state with respect to each obligor. The Department of Health and Human Services shall likewise transmit to other states requests for assistance in enforcing support orders through high-volume, automated administrative enforcement where appropriate."

Section 7. G.S. 108A-69, as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"§ 108A-69. Employer obligations.

(a) As used in this section and in G.S. 108A-70:

(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; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of Chapter 58 of the General Statutes, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of Chapter 58 of the General Statutes; ~~and means~~ a group health plan, as defined in Section 607(1) of the Employee Retirement Income Security Act of ~~1974.~~ 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the

parent is eligible for family health benefit plan coverage through an ~~employer doing business in this State,~~ employer, the employer:

(1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Health and Human Services in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.

(3) May not disenroll or eliminate coverage of the child unless:

a. The employer is provided satisfactory written evidence that:

1. The court or administrative order is no longer in effect; or

2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or

b. The employer has eliminated family health benefit plan coverage for all of its employees.

(4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

Section 8. G.S. 58-51-115(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

(1) 'Health benefit plan' means any 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; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of this Chapter; ~~and means~~ a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of ~~1974.~~ 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes."

Section 9. G.S. 15A-1344.1(a) reads as rewritten:

"(a) When the court requires, as a condition of supervised or unsupervised probation, that a defendant support his children, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply. If child support is to be paid through income withholding, the payments shall be made in accordance with G.S. 110-139(f)."

Section 10. G.S. 50-13.9(b) reads as rewritten:

"(b) After entry of such an order by the court, the clerk of superior court shall transmit child support payments that are made to the clerk in IV-D cases to the Department of Health and Human Services for appropriate distribution. Pursuant to G.S. 110-139(f), amounts withheld by employers in IV-D and in non-IV-D cases shall be sent directly from the employer to the State Child Support Collection and Disbursement Unit for disbursement to the custodial parent or other party entitled to receive them, unless a court order requires otherwise. In ~~all other cases,~~ non-IV-D cases in which wage withholding is not in effect, the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise."

Section 11. G.S. 50-13.9(b2) reads as rewritten:

"(b2) In a non-IV-D case:

(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. In non-IV-D cases subject to income withholding, the State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D income-withholding cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.

(2) The clerk of court shall maintain all official records in the case.

(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received."

Section 12. G.S. 110-136.8(b), as amended by Section 1 of S.L. 1998-17 and Section 7 of S.L. 1998-176, reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the ~~clerk of superior court or~~ State ~~collection and disbursement unit,~~ Child Support Collection and Disbursement Unit, as specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the ~~clerk of court,~~ State Child Support Collection and Disbursement Unit, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the State collection and disbursement unit;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State collection and disbursement unit in a non-IV-D case, in writing:

a. If there are one or more orders of child support withholding for the obligor;

a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 13. G.S. 110-136.8(d) reads as rewritten:

"(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to ~~each clerk of superior court~~ the State Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligor's disposable income."

Section 14. G.S. 110-136.9 reads as rewritten:

"**§ 110-136.9. Payment of withheld funds.**

In IV-D ~~cases,~~ cases and in non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding, when required by federal or State law or regulations or by court order, the ~~clerk of superior court~~ State Child Support Collection and Disbursement Unit shall ~~transmit~~ distribute payments received from ~~payors to the Department of Health and Human Services for appropriate distribution.~~ payors. In all other cases, unless a court order

requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent."

Section 15. This act becomes effective October 1, 1999. The mandatory sanctions under G.S. 110-142.2(b), as amended by Section 2 of this act, apply when an obligor is adjudicated to be in civil or criminal contempt for a third or subsequent time after this act becomes effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 302
Proposed Committee Substitute H302-PCS2311-LY

Short Title: Enhance Child Support Enforce./AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-132(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of ~~paternity,~~ paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the recision and to include in the order specific findings of fact that the request for recision was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders recision and the putative father is thereafter found not to be the father of the child, then the

clerk of court shall send a copy of the order of recision to the State Registrar of Vital Statistics. Upon receipt of an order of recision, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. The mother shall not be excused from making the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

Section 2. G.S. 110-142.2(b), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(b) Upon finding that the individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. If an individual is adjudicated to be in civil or criminal contempt for a third or subsequent time for failure to comply with a child support order, the court shall enter an order instituting any one or more of the sanctions as provided in subsection (a) of this section. The

court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any court-ordered payment plan under this subsection shall require the individual to extinguish the delinquency within a reasonable period of time. In determining the amount to be applied to the delinquency, the court shall consider the amount of the debt and the individual's financial ability to pay. The payment shall not exceed the limits under G.S. 110-136.6(b). The individual shall make an immediate initial payment representing at least five percent (5%) of the total delinquency or five hundred dollars ($500.00), whichever is less. Any ~~such~~ stay of an order under this subsection shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order."

Section 3. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20."

Section 4. G.S. 52C-5-501(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from the North Carolina Employment Security Commission, an income-withholding order issued in another state may be sent to the Employment Security Commission without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the Employment Security Commission shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order. The Employment Security Commission shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

Section 5. G.S. 110-136.2(f) reads as rewritten:

"(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Employment Security Commission and payment shall be made by the Employment Security Commission directly to the Department of Health and Human Services pursuant to G.S. ~~96-17.~~ 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human ~~Services,~~ Services or to another state under G.S. 52C-5-501, the Employment Security Commission is exempt from the provisions of G.S. 110-136.8."

Section 6. The General Statutes are amended by adding a new section to read:

"**§ 110-139.3. High-volume, automated administrative enforcement in interstate cases (AEI).**

Upon request of another state, the Department of Health and Human Services shall use automated data processing to search State databases and determine if information is available regarding a parent who owes a child support obligation and shall seize identified assets using the same techniques as used in intrastate cases. Any request by another state to enforce support orders shall certify the amount of each obligor's debt and that appropriate due process requirements have been met by the requesting state with respect to each obligor. The Department of Health and Human Services shall likewise transmit to other states requests for assistance in enforcing support orders through high-volume, automated administrative enforcement where appropriate."

Section 7. G.S. 108A-69, as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"**§ 108A-69. Employer obligations.**

(a) As used in this section and in G.S. 108A-70:

(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; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of Chapter 58 of the General Statutes, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of Chapter 58 of the General Statutes; ~~and means~~ a group health plan, as defined in Section 607(1) of the Employee Retirement Income Security Act of ~~1974.~~ 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an ~~employer doing business in this State;~~ employer, the employer:

(1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Health and Human Services in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.

(3) May not disenroll or eliminate coverage of the child unless:

a. The employer is provided satisfactory written evidence that:

1. The court or administrative order is no longer in effect; or

2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or

b. The employer has eliminated family health benefit plan coverage for all of its employees.

(4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

Section 8. G.S. 58-51-115(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

(1) 'Health benefit plan' means any 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; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of this Chapter; ~~and means~~ a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of ~~1974.~~ 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes."

Section 9. G.S. 15A-1344.1(a) reads as rewritten:

"(a) When the court requires, as a condition of supervised or unsupervised probation, that a defendant support his children, the court may order at any time that

support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply. If child support is to be paid through income withholding, the payments shall be made in accordance with G.S. 110-139(f)."

Section 10. G.S. 50-13.9(b) reads as rewritten:

"(b) After entry of such an order by the court, the clerk of superior court shall transmit child support payments that are made to the clerk in IV-D cases to the Department of Health and Human Services for appropriate distribution. Pursuant to G.S. 110-139(f), amounts withheld by employers in IV-D and in non-IV-D cases shall be sent directly from the employer to the State Child Support Collection and Disbursement Unit for disbursement to the custodial parent or other party entitled to receive them, unless a court order requires otherwise. In ~~all other cases,~~ non-IV-D cases in which wage withholding is not in effect, the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise."

Section 11. G.S. 50-13.9(b2) reads as rewritten:

"(b2) In a non-IV-D case:

(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. In non-IV-D cases subject to income withholding, the State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D income-withholding cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.

(2) The clerk of court shall maintain all official records in the case.

(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received."

Section 12. G.S. 110-136.8(b), as amended by Section 1 of S.L. 1998-17 and Section 7 of S.L. 1998-176, reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the ~~clerk of superior court or~~ State ~~collection and disbursement unit,~~ Child Support Collection and Disbursement Unit, as specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by

G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the ~~clerk of court,~~ State Child Support Collection and Disbursement Unit, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the State collection and disbursement unit;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State collection and disbursement unit in a non-IV-D case, in writing:

a. If there are one or more orders of child support withholding for the obligor;

a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 13. G.S. 110-136.8(d) reads as rewritten:

"(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to ~~each clerk of superior court~~ the State Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligor's disposable income."

Section 14. G.S. 110-136.9 reads as rewritten:

"**§ 110-136.9. Payment of withheld funds.**

In IV-D ~~cases,~~ cases and in non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding, when required by federal or State law or regulations or by court order, the ~~clerk of superior court~~ State Child Support Collection and Disbursement Unit shall ~~transmit~~ distribute payments

received from ~~payors to the Department of Health and Human Services for appropriate distribution.~~ payors. In all other cases, unless a court order requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent."

Section 15. This act becomes effective October 1, 1999. The mandatory sanctions under G.S. 110-142.2(b), as amended by Section 2 of this act, apply when an obligor is adjudicated to be in civil or criminal contempt for a third or subsequent time after this act becomes effective.

Summary
HB-302—Enhance Child Support Enforcement/AB
Revised

- Provides that the written acknowledgment of paternity executed by the putative father, accompanied by a written affirmation of paternity executed and sworn to be the mother of the child constitutes an admission of paternity subject to the right of rescission. It will have the same force and effect as a judgment of paternity issued by a judge.

- The proposed legislation instructs the court to use any one or more of the sanctions/remedies provided in the law when the individual has been adjudicated to be in civil or criminal contempt for a third or subsequent time for failure to comply with the order. Also, it requires that the child support debt be paid off within 10 years and to make an immediate initial payment representing at least 5% of the total delinquency or $500.00 whichever is greater.

- Requires that all new and modified court orders for child support be paid on monthly frequencies, starting on the first of the month.

- Provides that a certified child support order, sent to the Employment Security Commission from another State's IV-D agency, immediately causes income withholding (up to 25% of the benefits) to be put into effect. The monies withheld would be forwarded to the requesting state's IV-D agency for appropriate disbursement.

- Adds a new section, G.S. 110, which will enable the State Child Support Enforcement Agency to quickly locate and secure assets held by delinquent obligors in another State or jurisdiction without opening a full-blown interstate case.

- Ensures that the NC State Employees' Comprehensive Major Medical Plan is a health plan in which Child Support Enforcement can add the child of a non-custodial parent to receive health benefits when the support order includes medical coverage.

- Removes the clerk of court's office **(in limited cases)** as an agency to receipt non-IV-D payments, which have Income Withholding orders in **establishment on or after January 1, 1994.** The legislative proposal will instruct those required to forward wages withheld for child support payments to the State Child Support Collection and Disbursement Unit as required by law.
(FYI: This proposal will bring NC General Statutes into compliance with Public Law 104-193 and streamline the collections and disbursement of child support payments. Employers across the country lobbied the U.S. Congress for this change.)

- This act shall become effective on October 1, 1999.

Prepared by Sharnese Ransome, DSS
733-3055

Reported 4/22/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1263 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON BETWEEN SIXTEEN AND EIGHTEEN YEARS OF AGE WITH A DRIVERS LICENSE ISSUED BY THE FEDERAL GOVERNMENT MAY BE ISSUED THE PROPER DRIVERS PERMIT UNDER THE GRADUATED DRIVERS LICENSE 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)

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1263

Short Title: Recog.-Federally Issued Licenses. (Public)

Sponsors: Representative Thomas.

Referred to: Judiciary IV.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON BETWEEN SIXTEEN AND EIGHTEEN YEARS OF AGE WITH A DRIVERS LICENSE ISSUED BY THE FEDERAL GOVERNMENT MAY BE ISSUED THE PROPER DRIVERS PERMIT UNDER THE GRADUATED DRIVERS LICENSE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 is amended by adding a new subsection to read:

"(h3) Exception for Persons Less Than Age 18 Who Have a Federally Issued Unrestricted or Restricted License. -- A person who is less than age 18, who has an unrestricted or restricted drivers license issued by the federal government, and who becomes a resident of this State may obtain a limited provisional license or a provisional license if the person has completed a drivers education program substantially equivalent to the drivers education program that meets the requirements of the Superintendent of Public Instruction. A person who qualifies for a limited provisional license or a provisional license under this subsection and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited provisional license or a provisional license in this State for each month the person held an unrestricted or restricted license issued by the federal government."

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

HOUSE BILL 1263:
Recog.-Federally Issued Licenses

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Thomas
Date:	April 21, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1263 authorizes the Division of Motor Vehicles to issue a limited provisional license or a provisional license, as applicable, to a person between the ages of 16 and 18 who has an unrestricted or restricted drivers license issued by the federal government. To obtain the limited provisional license or provisional license, the person must have completed a drivers education program that meets the requirements of the Superintendent of Public Instruction.

The person will be deemed to have held the limited provisional license or provisional license for each month the person held a restricted or unrestricted federal license.

CURRENT LAW: The current law contains exceptions for persons between the ages of 16 and 18 who have restricted and unrestricted licenses issued by another state. The law contains no exception for federally issued licenses.

Under the current law, a provisional license is issued to a 16-18 year olds who have held a limited provisional license for at least 6 months.

§ 20-11. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

(a) Process. — Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1. — Driving with a limited learner's permit.

(2) Level 2. — Driving with a limited provisional license.

(3) Level 3. — Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

(b) Level 1. — A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.

(2) Passes a written test administered by the Division.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

(c) Level 1 Restrictions. — A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

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

(d) Level 2. — A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

(3) Passes a road test administered by the Division.

(4) Has a driving eligibility certificate or a high school diploma or its equivalent.

(e) Level 2 Restrictions. — A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.
b. When driving to or from work.
c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

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

(f) Level 3. — A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.
(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.
(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. — The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Exception for Persons 16 to 18 Who Have an Unrestricted Out-of-State License. — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following upon the submission of a driving eligibility certificate or a high school diploma or its equivalent:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.
(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and

has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(h1) Exception for Persons 16 to 18 Who Have an Out-of-State Restricted License. — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has a restricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

(1) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, held the restricted license issued by the other state for at least 12 months, and whose parent or guardian certifies that the person has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(2) A limited learners permit, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the restricted license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State. A person who qualifies for a limited learners permit under this subdivision and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited learners permit in this State for each month the person held a restricted license in another state.

(h2) Exception for Persons Age 15 Who Have an Out-of-State Unrestricted or Restricted License. — A person who is age 15, who was a resident of another state, has an unrestricted or restricted drivers license issued by that state, and who becomes a resident of this State may obtain a limited learners permit if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction. A person who qualifies for a limited learners permit under this subsection and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited learners permit in this State for each month the person held an unrestricted or restricted license in another state.

(i) Application. — An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be:

(1) The applicant's parent or guardian;

(2) A person approved by the applicant's parent or guardian; or

(3) A person approved by the Division.

(j) Duration and Fee. — A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ten dollars ($10.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. — A supervising driver must be a parent or guardian of the permit holder or license holder or a responsible person approved by the parent or guardian or the Division. A supervising driver must be a licensed driver who has been licensed to drive for at least five years. A supervising driver must sign the application for a permit or license. Each permit or license issued pursuant to this section shall be limited to a maximum of two supervising drivers.

(*l*) Violations. — It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176.

(m) Insurance Status. — The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(n) Driving Eligibility Certificate. — A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:
   a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
   b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.
   c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It must be signed by the applicable person named below:
   a. The principal, or the principal's designee, of the public school in which the person is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.

c. The person who provides the academic instruction in the home school in which the person is enrolled.

c1. The person who provides the academic instruction in the home in accordance with an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law.

d. The designee of the board of directors of the charter school in which the person is enrolled.

e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171; 1967, c. 694; 1969, c. 37; 1973, c. 191, ss. 1, 2; c. 664, ss. 1, 2; 1975, c. 79; c. 716, s. 5; 1979, c. 101; c. 667, ss. 15, 16, 41; 1981 (Reg. Sess., 1982), c. 1257, s. 2; 1989 (Reg. Sess., 1990), c. 1021, s. 11; 1991, c. 689, s. 326; 1993, c. 539, s. 319; 1994, Ex. Sess., c. 24, s. 14(c); 1997-16, s. 1; 1997-507, s. 1; 1998-149, ss. 2.1, 2.2, 2.3, 2.4, 2.5; 1998-212, s. 9.21(c).)

Editor's Note. —

Session Laws 1993, c. 539, s. 319, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

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

Session Laws 1997-443, s. 35.20, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-507, s. 6, effective September 17, 1997, provides that the State Board of Education shall initiate and coordinate meetings in order to develop coordinated rules, policies, and guidelines needed to implement the act.

Session Laws 1997-507, s. 7, effective September 7, 1997, provides the State Board of Education shall study the effectiveness of this act on the dropout rates and progress toward graduation of students under the age of 18 and shall report the results of this study to the Joint Legislative Education Oversight Committee and the Fiscal Division by November 15, 2002.

Session Laws 1997-507, s. 8, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Supplement

VISITOR REGISTRATION SHEET

Judiciary IV — 10:00 am — 4-22-99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Barry Mitlo	Child Support Enforcement
Elizabeth Hanes	Child Support Enf.
Gerald L. Robbins	DOJ
Lucius PULLEN	ATTORNEY
Rusty Lynn	NCCA
Mac Mumford	Poyner & Spruill
Alida Gregory	Poyner & Spruill
John Phelps	NCLM
Jack Cozort	Parker Poe Adams & Bernstein
Leanne Winner	NCSBA
Mark Black	NCBAA
Peg Dorer	Conference of DAs
Jeanne Bonds	AOC
Chris Marks	AOC

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

April 23, 1999 – 1:00 p.m.

The House Committee on Judiciary IV met on Friday, April 23, 1999, in Room 421 LOB at 1:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Jeffus, McMahan, Pope , and Cunningham. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and called for consideration of the following bill:

HB 1224 Expand Magistrates' Authority. Rep. McMahan, having voted with the prevailing side, moved that the committee substitute be reconsidered by the committee. Motion carried. Rep. Baddour moved for adoption of the new committee substitute for purposes of discussion. Motion passes. Rep. Baddour explains that the committee substitute contains a few technical changes and moved for a favorable report as to committee substitute and unfavorable as to original bill. Motion carried.

The Chairman announced that **HB 1033 Appellate Judge Elections and HB 1219 Pretrial Release & Bond** would not be taken up before the crossover deadline.

The meeting adjourned at 1:20 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 4/26/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1224 A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE 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.

☐ 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 1224*
Proposed Committee Substitute H1224-PCSSK-003

Short Title: Expand Magist. Authority. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to

accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;

(2) To accept binding waivers of counsel in criminal cases."

Section 2. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;

(8) To take acknowledgments of instruments, as provided in G.S. 47-1;

(9) To perform the marriage ceremony, as provided in G.S. 51-1;

(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and

(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in nonjury civil actions within the amount in controversy for the district court division as provided in G.S. 7A-243;

(2) To give judgment of absolute divorce in favor of the plaintiff pursuant to G.S. 50-10, but only in actions in which:
a. The only claim asserted in the plaintiff's complaint is a claim for absolute divorce;
b. The complaint and summons were served on the defendant personally, or service of the complaint and summons was accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1); and
c. No answer or other responsive pleading is filed within the time provided by law or the only responsive pleading admits all the allegations of the complaint;
(3) To determine and issue orders establishing child support and issue show cause orders in child support proceedings;
(4) To order blood tests in paternity cases and take acknowledgments of paternity;
(5) To determine and issue orders for the emancipation of minors;
(6) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110; and
(7) To accept binding waivers of counsel in civil contempt cases.

(c) Appeal from judgment of a magistrate under subsection (b) of this section shall be as provided for in Article 19 of Chapter 7A."

Section 3. G.S. 50-10 reads as rewritten:

"**§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.**

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading.

(e) As used in this section, the terms 'judge' and 'court' include the magistrate."

Section 4. G.S. 15A-1115 reads as rewritten:

"(a) Appeal of District Court Decision. -- A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~ court or before a magistrate pursuant to G.S. 7A-273(b)(1), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

Section 5. This act is effective when it becomes law and applies to actions by magistrates on or after that date.

VISITOR REGISTRATION SHEET

Judiciary IV — April 23, 1999

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	[signature]	NCAWA
2.	Matt Osborne	AOC
3.	[signature]	Conference of D.As
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MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

May 4, 1999

The House Committee on Judiciary IV met on Tuesday, May 4, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Decker, Jeffus, Justus, Mosley, Pope and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order and called for consideration of the following bills:

SB 128 Interest on Money Judgments. Senator Hartsell, bill sponsor, was recognized to explain the bill. After the explanation , Rep. Justus raised a question and proposed an amendment. After a brief discussion, the amendment was adopted. Rep. Saunders moved for a favorable report to the bill as amended to be placed into a committee substitute. The House committee substitute was given a favorable report and the Senate committee substitute was given an unfavorable report. Motion passed.

SB 245 Letters of Credit UCC Rewrite. Senator Hartsell, bill sponsor, was recognized to explain the bill. After brief explanation and discussion, Rep. Bowie moved for a favorable report, which was seconded by Rep. Pope. Motion carried.

SB 176 Slayer/Forfeiture of Property Rights. Senator Hartsell, bill sponsor, was recognized to explain the bill. Senator Hartsell noted that this bill is the same as one introduced by Rep. Culpepper in the House. Rep. Bowie moved for a favorable report and the motion carried.

The meeting adjourned at 10:55 a.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Carolyn Coordes
Committee Assistant

Reported 5/6/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 128 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW CONCERNING INTEREST ON MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO ALLOW INTEREST ON JUDGMENTS ON PENAL BONDS.

☐ 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

DATE: _____

S.B. 128-Interest on Money Judgments
(Third Edition Engrossed 3/31/99)

Amendment No. _____
(to be filed in by Principal Clerk)

Rep. _____

moves to amend by bill on page 2, lines 2 and 3 by:

deleting the words "beginning on the 91st day after" and substituting the word "from" so that those lines read:

"judgment, except the costs, bears interest at the legal rate from the date of entry of judgment until the judgment is satisfied."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 128*
Judiciary I Committee Substitute Adopted 2/24/99
Third Edition Engrossed 3/31/99

Short Title: Interest on Money Judgments. (Public)

Sponsors:

Referred to:

February 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW CONCERNING INTEREST ON MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO ALLOW INTEREST ON JUDGMENTS ON PENAL BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-5 reads as rewritten:

"**§ 24-5. ~~Contracts, except penal bonds, and judgments to bear interest.~~ Interest on judgments.**

(a) Actions on Contracts. -- In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after ~~judgment~~ judgment, then interest on an award in a contract action shall be at the contract rate after ~~judgment,~~ judgment; otherwise it shall be at the legal ~~rate; provided, however, that on~~ rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal ~~rate, provided however, such rate shall not exceed~~ rate or the contract rate.

(a1) Actions on Penal Bonds. -- In an action on a penal bond, the amount of the judgment, except the costs, bears interest at the legal rate beginning on the 91st day after the date of entry of judgment until the judgment is satisfied.

(b) Other Actions. -- In an action other than contract, ~~the~~ any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is ~~instituted~~ commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of entry of judgment until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate."

Section 2. Section 2 of Chapter 214 of the 1985 Session Laws reads as rewritten:

"Sec. 2. This act shall become effective October 1, 1985. This act shall not affect pending ~~litigation and shall not affect the law as it existed before the enactment of Chapter 327 of the 1991 Session Laws.~~ litigation."

Section 3. This act becomes effective October 1, 1999, and applies to actions or proceedings filed on or after that date, except that G.S. 24-5(a1), as enacted by Section 1 of this act, applies to actions on penal bonds in which the penal bond is filed or posted on or after October 1, 1999. The amendments to G.S. 24-5(a) in Section 1 of this act shall not apply to actions based on a contract entered into on or after October 1, 1985, and prior to October 1, 1987, in which the contract specifically provided that interest after judgment shall be at the contract rate.

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: May 3, 1999

RE: Senate Bill 128 (Interest on Money Judgments)

General Comments

The part of this bill recommended by the General Statutes Commission amends G.S. 24-5 to restate the codified statute so that it reflects current North Carolina law concerning interest on money judgments. The bill results from the opinion of the North Carolina Supreme Court in Custom Molders, Inc. v. American Yard Products, Inc., 342 N.C. 133, 463 S.E.2d 199 (1995). In that opinion, the Court held, among other things, that a sentence from the pre-1981 version of G.S. 24-5 is still part of G.S. 24-5, although it is not included in the currently codified version. This sentence reads, "In like manner, the amount of any judgment or decree, except the costs, rendered or adjudged in any kind of action, though not on contract, shall bear interest till paid, and the judgment and decree of the Court shall be rendered according to this section." In other words, the sentence provides that a judgment in noncontract cases bears interest from the entry of judgement until the judgment is paid. The purpose of this draft is to reincorporate the gist of this sentence into the currently codified version of G.S. 24-5 in a manner stylistically compatible with the rest of the statute and to restate the statute clearly and unambiguously for future cases. The Commission also recommended the stylistic updates in the draft.

The amendment in Section 1, adding a new subsection (a1) that allows interest on judgments on penal bonds, was added to G.S. 24-5 in the Senate.

Specific Comments

Section 1. This section amends G.S. 24-5 as generally described above. The amendments to the catchline and to subsection (a) are intended as stylistic updates. The amendments to subsection (b) reincorporate the gist of the sentence from the pre-1981 version of this statute that was declared still part of it by the North Carolina Supreme Court, as explained above.

Section 2. Because the intent of this draft is to restate the statutory law clearly and unambiguously, this section deletes the applicability language relied upon by the North Carolina Supreme Court in reaching its decision in Custom Molders.

Section 3. This section contains effective date and applicability provisions. The special contract provision preserves an exception from an earlier amendment to G.S. 24-5(a).

Brief Historical Summary

Before 1981, G.S. 24-5 consisted of two sentences: one long sentence dealing with interest on judgments in contract actions and the sentence quoted above under General Comments dealing with interest in noncontract actions. In 1981, the General Assembly rewrote the sentence on interest in noncontract actions so that it allowed pre- and postjudgment interest on compensatory damages covered by liability insurance but only postjudgment interest on compensatory damages not covered by liability insurance. The rewritten version lacked any mention of interest on anything other than compensatory damages in noncontract actions. In 1985, the General Assembly again amended G.S. 24-5 and recast it into its present basic form. The provisions for interest in contract actions were placed in subsection (a), and the provisions on interest in noncontract actions were placed in subsection (b). As rewritten by the General Assembly in 1985, the language in subsection (b) provides for interest on compensatory damages from the date an action is filed regardless of the existence of liability insurance. Like the 1981 revision, subsection (b) as rewritten by the 1985 session law also contains no mention of postjudgment interest on noncompensatory damages.

In the Custom Molders case, plaintiff's compensatory damages were trebled, and it argued that it was entitled to postjudgment interest on the entire, trebled, judgment plus prejudgment interest on the compensatory portion of the judgment. Defendant argued that, under G.S. 24-5, plaintiff was only entitled to pre- and postjudgment interest on the compensatory amount and was not entitled to interest on anything else. The North Carolina Supreme Court held for the plaintiff on the basis of the italicized application clause in the 1985 session law:

> Sec. 2. This act shall become effective October 1, 1985. This act shall not affect pending litigation *and shall not affect the law as it existed before the enactment of Chapter 327 of the 1981 Session Laws.*

The Court concluded explicitly that the italicized language meant the pre-1981 sentence allowing postjudgment interest on noncontract judgments, quoted under General Comments, was still part of G.S. 24-5, although the General Assembly had not specifically included it in the statute when it rewrote G.S. 24-5 in 1985.

SENATE BILL 128:
Interest on Money Judgments

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Senator Hartsell
Date:	May 3, 1999	**Summary by:**	Tim Hovis
Version:	Third Edition		Committee Counsel

SUMMARY: Senates Bill 128 clarifies the law governing interest on judgments. The bill is a recommendation of the General Statutes Commission. The bill amends G.S. 24-5 that sets out in what situations interest applies to judgments, and the rate of interest that applies.

This bill clarifies and conforms the statute to the interpretation of the law as handed down by the N.C. Supreme Court in the case of Custom Molders, Inc. v. American Yard Products, 342 NC 133 (1995). The bill clarifies that other than judgments on actions under contract or judgments for compensatory damages, the judgment bears interest at the legal rate (currently 8% under G.S. 24-1) from the date of the judgment until the judgment is satisfied. Current statutory law is silent on this point and the Supreme Court has held that it was the legislative intent when the statute was amended in 1985 that the then current law allowing interest from the date of judgment in these situations would continue.

Section 1 of the bill makes these changes to G.S. 24-5. Section 1 also provides that, in an action on penal bond, the judgment bears interest at the legal rate beginning on the 91st day after entry of the judgment.

Section 2 amends the 1985 Session Law which amended G.S. 24-5 by deleting portions of the applicability statement which said that the 1985 changes were not intended to change the law that existed prior to 1981, since Section 1 restores the 1981 law.

Section 3 makes the bill effective October 1, 1999 and applies it to actions filed on or after that date. This section also preserves the exception found in the1985 act for the applicable rate on certain personal, family, household, or agricultural loans.

This summary was contributed to by Walker Reagan, Staff Attorney.

Reported 5/4/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
SB 245 A BILL TO BE ENTITLED AN ACT TO ENACT REVISED ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 245*
Judiciary I Committee Substitute Adopted 4/19/99

Short Title: Letters of Credit UCC Rewrite/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT REVISED ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 5.
"Letters of Credit.

"**§ 25-5-101. Short title.**

This Article may be cited as Uniform Commercial Code -- Letters of Credit.

"**§ 25-5-102. Definitions.**

(a) In this Article:

(1) 'Adviser' means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) 'Applicant' means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) 'Beneficiary' means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) 'Confirmer' means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) 'Dishonor' of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) 'Document' means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in G.S. 25-5-108(e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) 'Good faith' means honesty in fact in the conduct or transaction concerned.

(8) 'Honor' of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, 'honor' occurs:

a. Upon payment;

b. If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

c. If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) 'Issuer' means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) 'Letter of credit' means a definite undertaking that satisfies the requirements of G.S. 25-5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) 'Nominated person' means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(12) 'Presentation' means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) 'Presenter' means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) '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.

(15) 'Successor of a beneficiary' means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other Articles of this Chapter applying to this Article and the sections in which they appear are:

'Accept' or 'Acceptance' G.S. 25-3-409

'Value' G.S. 25-3-303, G.S. 25-4-209.

(c) Article 1 of this Chapter contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article.

"§ 25-5-103. Scope.

(a) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(c) With the exception of this subsection, subsections (a) and (d) of this section, G.S. 25-5-102(a)(9) and (10), 25-5-106(d), and 25-5-114(d), and except to the extent prohibited in G.S. 25-1-102(3) and G.S. 25-5-117(d), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

"§ 25-5-104. Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in G.S. 25-5-108(e).

"§ 25-5-105. Consideration.

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

"**§ 25-5-106. Issuance, amendment, cancellation, and duration.**

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

"**§ 25-5-107. Confirmer, nominated person, and adviser.**

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant, and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

"**§ 25-5-108. Issuer's rights and obligations.**

(a) Except as otherwise provided in G.S. 25-5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in G.S. 25-5-113 and unless

otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) To honor;

(2) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor (i) fraud or forgery as described in G.S. 25-5-109(a) or (ii) expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(2) An act or omission of others; or

(3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e) of this section.

(g) If an undertaking constituting a letter of credit under G.S. 25-5-102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this Article:

(1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) Takes the documents free of claims of the beneficiary or presenter;

(3) Is precluded from asserting a right of recourse on a draft under G.S. 25-3-414 and G.S. 25-3-415;

(4) Except as otherwise provided in G.S. 25-5-110 and G.S. 25-5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

"**§ 25-5-109. Fraud and forgery.**

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) All of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subdivision (a)(1) of this section.

"**§ 25-5-110. Warranties.**

(a) If its presentation is honored, the beneficiary warrants:

(1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in G.S. 25-5-109(a); and

(2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 of this Chapter because of the presentation or transfer of documents covered by any of those Articles.

"**§ 25-5-111. Remedies.**

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b) of this section.

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorneys' fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article, and G.S. 6-21.2 shall not apply.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

"**§ 25-5-112. Transfer of letter of credit.**

(a) Except as otherwise provided in G.S. 25-5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) The transfer would violate applicable law; or

(2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in G.S. 25-5-108(e) or is otherwise reasonable under the circumstances.

"**§ 25-5-113. Transfer by operation of law.**

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in G.S. 25-5-108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) of this section has the consequences specified in G.S. 25-5-108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of G.S. 25-5-109.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b) of this section.

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

"**§ 25-5-114. Assignment of proceeds.**

(a) In this section, 'proceeds of a letter of credit' means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 of this Chapter or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 of this Chapter or other law.

"**§ 25-5-115. Statute of limitations.**

An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

"**§ 25-5-116. Choice of law and forum.**

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in G.S. 25-5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this Article

would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in G.S. 25-5-103(c).

(d) If there is conflict between this Article and Article 3, 4, 4A, or 9 of this Chapter, this Article governs.

(e) Notwithstanding G.S. 22B-3, the forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a) of this section.

"**§ 25-5-117. Subrogation of issuer, applicant, and nominated person.**

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a) of this section.

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse."

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

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

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

Applicability of the article on bank deposits and collections. (G.S. 25-4-102).
Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).
Applicability of the article on investment securities. (G.S. 25-8-110).
Perfection provisions of the article on secured transactions. (G.S. 25-9-103).
Governing law in the article on Funds Transfers. (G.S. 25-4A-507).
Letters of Credit. (G.S. 25-5-116)."

Section 3. G.S. 25-2-512(1) reads as rewritten:

"(1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under ~~the provisions of~~ this chapter ~~(G.S. 25-5-114).~~ (G.S. 25-5-109(b))."

Section 4.(a) The catch line to G.S. 25-9-103(1) reads as rewritten:

"(1) Documents, ~~Instruments~~ Instruments, Letters of Credit, and Ordinary Goods. --".

Section 4.(b) G.S. 25-9-103(1)(a) reads as rewritten:

"(a) This subsection applies to ~~documents and instruments and to~~ documents, instruments, rights to proceeds of written letters of credit, and goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5)."

Section 5.(a) G.S. 25-9-104(l) reads as rewritten:

"(l) to a transfer of an interest in any deposit account (subsection (1) of G.S. 25-9-105), except as provided with respect to proceeds (G.S. 25-9-306) and priorities in proceeds ~~(G.S. 25-9-312).~~ (G.S. 25-9-312); or".

Section 5.(b) G.S. 25-9-104 is amended by adding a new subsection to read:

"(m) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit."

Section 6. G.S. 25-9-105(3) reads as rewritten:

"(3) The following definitions in other Articles apply to this Article:
'Broker.' (G.S. 25-8-102).
'Certificated security.' (G.S. 25-8-102).
'Check.' (G.S. 25-3-104).
'Clearing corporation.' (G.S. 25-8-102).
'Contract for sale.' (G.S. 25-2-106).
'Control.' (G.S. 25-8-106).
'Delivery.' (G.S. 25-8-301).
'Entitlement holder.' (G.S. 25-8-102).
'Financial asset.' (G.S. 25-8-102).
'Holder in due course.' (G.S. 25-3-302).
'Letter of credit.' (G.S. 25-5-102).

'Note.' (G.S. 25-3-104).
'Proceeds of a letter of credit.' (G.S. 25-5-114(a)).
'Sale.' (G.S. 25-2-106).
'Securities intermediary.' (G.S. 25-8-102).
'Security.' (G.S. 25-8-102).
'Security certificate.' (G.S. 25-8-102).
'Security entitlement.' (G.S. 25-8-102).
'Uncertificated security.' (G.S. 25-8-102)."

Section 7. G.S. 25-9-106 reads as rewritten:

"**§ 25-9-106. Definitions: 'Account'; 'general intangibles.'**

'Account' means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. 'General intangibles' means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts."

Section 8.(a) The catch line to G.S. 25-9-304 reads as rewritten:

"**§ 25-9-304. Perfection of security interest in instruments, documents, proceeds of a written letter of credit, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.**"

Section 8.(b) G.S. 25-9-304(1) reads as rewritten:

"(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of G.S. 25-9-306 on proceeds."

Section 9. G.S. 25-9-305 reads as rewritten:

"**§ 25-9-305. When possession by secured party perfects security interest without filing.**

A security interest in ~~letters of credit and advices of credit (subsection (2)(a) of G.S. 25-5-116),~~ goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the rights to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be

otherwise perfected as provided in this article before or after the period of possession by the secured party."

Section 10. A transaction arising out of or associated with a letter of credit that was issued before the effective date of this act and the rights, obligations, and interest flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

Section 11. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 5 and conforming and miscellaneous amendments to Articles 1, 2, and 9 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 12. This act becomes effective October 1, 1999, and applies to a letter of credit that is issued on or after that date and does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before that date.

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: April 30, 1999

RE: Senate Bill 245 (Letters of Credit UCC Rewrite)

Senate Bill 245 amends Chapter 25 of the General Statutes to enact Uniform Commercial Code Revised Article 5 (Letters of Credit) and the conforming and miscellaneous amendments to Uniform Commercial Code Articles 1 (General Provisions), 2 (Sales), and 9 (Secured Transactions). Completed in 1995 by the National Conference of Commissioners on Uniform State Laws in conjunction with the American Law Institute, Revised Article 5 modernizes and clarifies original Article 5, which was drafted almost 40 years ago and enacted in North Carolina in 1965 (effective July 1, 1967). Revised Article 5: (1) conforms letter of credit law to current customs and practice; (2) accommodates new forms of letters of credit, changes in customs and practices, and evolving technology; (3) maintains letters of credit as an inexpensive and efficient instrument facilitating trade; and (4) resolves conflicts among reported court decisions. Revised Article 5 has been enacted in 38 states and the District of Columbia and has been introduced this year in Alaska, Florida, and Texas.

Attached are the following materials from the Uniform Law Commissioners' information kit on Uniform Commercial Code Revised Article 5: (1) a fact sheet stating Revised Article 5's purpose, origin, and legislative history in other jurisdictions; and (2) an excerpt from the Prefatory Note to Revised Article 5. The Official Comments to Revised Article 5 are also available and will be published in the General Statutes as annotations if the bill is enacted.

The bill differs from Uniform Commercial Code Revised Article 5 ("Uniform Act") in two places where the General Statutes Commission believed that the language of the Uniform Act should be amended to prevent any conflict with North Carolina law.

First, § 25-5-111(e) clarifies the relationship between § 5-111(e) of the Uniform Act and G.S. 6-21.2. § 5-111(e) of the Uniform Act requires that reasonable attorney's fees be

awarded to the prevailing party in an action in which a remedy is sought under the Uniform Act. G.S. 6-21.2 provides, in part, that if an "evidence of indebtedness" provides for the payment of reasonable attorney's fees without specifying a certain percentage, the provision shall be construed to mean 15% of the outstanding balance and that, in order to recover the attorney's fees, the holder of the instrument must satisfy certain notice requirements. Since a letter of credit reimbursement agreement might be considered an "evidence of indebtedness," § 25-5-111(e) contains specific language to state that G.S. 6-21.2 does not apply to the recovery of reasonable attorney's fees under § 25-5-111(e).

Second, § 25-5-116(e) addresses a conflict with G.S. 22B-3. § 5-116(e) of the Uniform Act permits the parties to a letter of credit transaction to select the forum for settling disputes. G.S. 22B-3 provides, with certain specified exceptions, that forum selection provisions in contracts entered into in North Carolina are void as against public policy. Therefore, the language "Notwithstanding G.S. 22B-3," was inserted at the beginning of § 25-116(e) to state that G.S. 22B-3 does not apply.

Other differences between the bill and the Uniform Act are not intended to be substantive.

Attachments

A Few Facts About
UCC ARTICLE 5 - LETTERS OF CREDIT

PURPOSE: Letters of Credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits can govern many of the particulars of letters of credit. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the document plus incidental damages. Consequential damages are not permitted. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1995.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:	Alabama	Mississippi
	Arizona	Missouri
	Arkansas	Montana
	California	Nebraska
	Colorado	Nevada
	Connecticut	New Hampshire
	Delaware	New Jersey
	District of Columbia	New Mexico
	Hawaii	North Dakota
	Idaho	Ohio
	Illinois	Oklahoma
	Indiana	Oregon
	Iowa	South Dakota
	Kansas	Tennessee
	Maine	Utah
	Maryland	Vermont
	Massachusetts	Virginia
	Michigan	Washington
	Minnesota	West Virginia
		Wyoming
1999 INTRODUCTIONS:	Alaska	North Carolina
	Florida	Texas

For any further information about UCC Article 5, Letters of Credit, please contact John McCabe or Katie Robinson at 312-915-0195.

(4/1/99)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

reported 6/30

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
S.B. 176 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ 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 176*
Judiciary I Committee Substitute Adopted 4/19/99

Short Title: Slayer/Forfeiture of Prop. Rights/AB. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31A-4 reads as rewritten:

"**§ 31A-4. Slayer barred from testate or intestate succession and other rights.**

The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

(1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession or by common law or statutory right as surviving spouse of the decedent.

(2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate ~~succession, such property shall pass to others next in succession in accordance with the applicable provision of the Intestate Succession Act.~~ succession and the slayer has living issue who would have been entitled to an interest in the property if the slayer had predeceased the decedent, the property shall be distributed to such issue, per stirpes. If the slayer does not have such issue, then the property shall be distributed as though the slayer had predeceased the decedent.

(3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, ~~such property shall pass as if the decedent had died intestate with respect thereto, unless otherwise disposed of by the will.~~ the devolution of such property shall be governed by G.S. 31-42(a) notwithstanding the fact the slayer has not actually died before the decedent."

Section 2. This act becomes effective October 1, 1999, and applies to the estates of decedents dying on or after that date.

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

MEMORANDUM

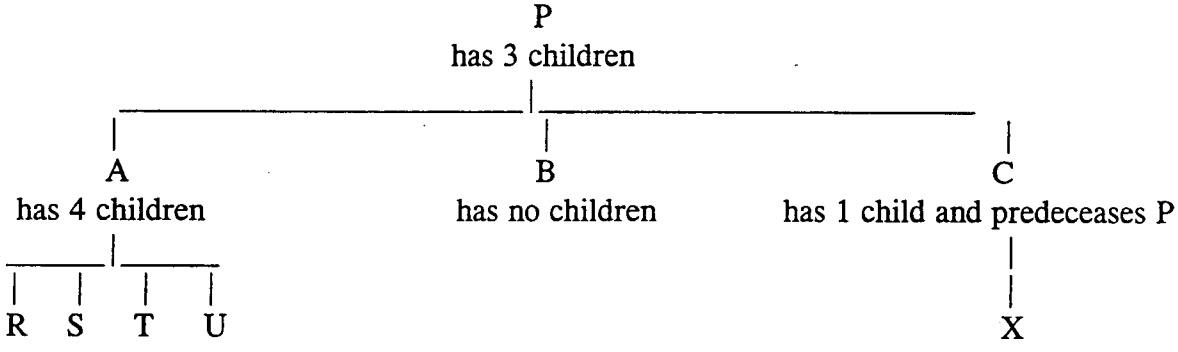
TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: April 30, 1999

RE: Senate Bill 176 (Slayer/Forfeiture of Property Rights)

This bill amends G.S. 31A-4 (the "slayer statute"), which, generally speaking, is designed to prevent a person who commits an unlawful killing (a "slayer") from inheriting from the victim. The proposed amendment eliminates the unintended result that a slayer, through a wrongful act, could cause a redistribution of an intestate estate. The problem could occur when, in the following chart, A murders P:



If P dies a natural death and dies intestate (without a will), A takes 1/3, B takes 1/3, and X takes 1/3. If A murders P, the slayer statute causes 1/3 of P's property to go to B and 2/3 to be divided equally among P's grandchildren. That is, due to A's wrongful act, X loses about 20% of the amount X would have inherited if P died a natural death (X takes only 1/5 of 2/3 (or 2/15) instead of 1/3). The bill amends G.S. 31A-4 to provide that the victim's property passes in the same way as it would if the slayer renounced an inheritance from P. Using the chart example, B takes 1/3, X takes 1/3, and the remaining 1/3 is divided between R, S, T, and U. If the slayer has no descendants, the decedent's property passes to the decedent's other heirs as in the current law.

The bill also explicitly provides that where the victim dies testate (with a will), the property is distributed as provided in the anti-lapse statute, G.S. 31-42, thereby incorporating part of the holding of the North Carolina Supreme Court in Meisenheimer v. Meisenheimer, 312 N.C. 692, 325 S.E.2d 195 (1985).

VISITOR REGISTRATION SHEET

Judiciary IV — May 4, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Schafer	North Carolina School Boards Assn.
Lucius Pullen	Attorney
John Kennedy	Clerk of Superior Court - Wake -
[signature]	AOC
Dick Carlton	Securities Ind. Assoc.
John Bode	Bode Call & Stroupe
Heather Reichlen	Camp Youth Leadership - Athens
William T Hill	" "
Erica Goodwin	" "
Kelly White	" "
Pauletta Spence	" "
Shannon Marshall	" "
Audrey Wells	" "
Katie Zell	" "
Sandra Brown	Camp Youth Leadership
Nneka Martin	
Krystal Powell	
Elizabeth Hagan	"
Megan Lebda	"
Evan Carl	

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

May 6, 1999

The House Committee on Judiciary IV met on Thursday, May 6, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Jeffus, Justus, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order and called for consideration of the following bills:

HB 1082 Licensing Selling of Cars. Rep. Saunders, bill sponsor, was recognized to explain the bill. Rep. Saunders sent forth an amendment and moved its adoption. Roger Bone and Vickie Betancort spoke in favor of the bill and amendment. Because some other questions were raised, the Chairman decided to temporarily displace the bill. No vote was taken.

SB 246 Appeal or Transfer from Clerk. Senator Hartsell, bill sponsor, was recognized to explain the bill. Senator Hartsell asked Mr. Jim Drennan of the Institute of Government to explain the bill. After discussion, Rep. Thomas moved to amend the bill and the amendment was adopted. Because of some concerns by the Committee, the bill was temporarily displaced. No vote was taken.

SB 272 Local Photo Enforcement (Senator Odom, bill sponsor) and SB 398 Greensboro Red Light Cameras (Senator Shaw, bill sponsor) Rep. Saunders moved for adoption of a proposed committee substitute for SB 272 for purpose of discussion. Motion passed. This proposed committee substitute adds a provision that no insurance points will be assessed. Rep. Saunders proposed an amendment to add some more cities to the bill and moved for its adoption. Motion passed and the amendment was adopted. Rep. Jeffus moved to add the amendment to the first committee substitute and roll it into a second committee substitute.. Since both SB 272 and SB 398 deal with the same subject, but authorize different cities, it was decided that SB 398 would be incorporated into the committee substitute for SB 272. Rep. Jeffus moved for a favorable report as to House committee substitute and unfavorable as to Senate committee substitute bill. Motion carried.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1082

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

H1082-ASK-001 Page 1 of __

Date_____,1999

Comm. Sub. []
Amends Title []

Rep. Saunders

moves to amend the bill on page 2, line 39,
by adding after the word "license." the following:
"The requirements of G.S. 20-288(a1)(2) do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers.";

and further amends the bill on page 2, lines 40-42,
by rewriting those lines to read:
"(3) If the applicant is an individual, proof that the applicant is at least 21 years of age and proof that all salespersons employed by the applicant are at least 18 years of age.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1082

Short Title: Licensing Selling of Cars. (Public)

Sponsors: Representative Saunders.

Referred to: Judiciary IV, if favorable, Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PENALTIES FOR SELLING CARS IN VIOLATION OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW TO ESTABLISH EDUCATIONAL REQUIREMENTS REQUIRED FOR ISSUANCE AND RENEWAL OF LICENSURE FOR USED MOTOR VEHICLE DEALERS, AND TO INCREASE FEES.

Whereas, not only the setting of standards to protect purchasers of motor vehicles but also the enforcement of substantial penalties applicable when those standards are not met is one of the most effective means to obtain this protection; and

Whereas, more complex laws governing regulation of the sale and distribution of motor vehicles such as the titling of a vehicle, warranties, collection of consumer debt pursuant to Federal Trade Commission regulations, and applicable tax provisions impose a greater number of duties upon independent automobile dealers; and

Whereas, the most effective and consistent means of informing both applicants for licensure and experienced, licensed motor vehicle dealers of major changes and increasing complexities in the law is to develop a program insuring the development and requirement of appropriate continuing education; and

Whereas, to better effect these policies it is necessary to increase to more appropriate levels the fees for those persons regulated by the Motor Vehicle Dealers and Manufacturers Licensing Law; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-287 reads as rewritten:

"**§ 20-287. Licenses ~~required.~~ required; penalties.**

(a) It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of each dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an established salesroom.

(b) Any person who violates any provision of this section shall be guilty of a Class 2 misdemeanor.

(c) In addition to any other punishment or remedy under the law for any violation of this section, the Division may levy and collect a civil penalty, in an amount not to exceed one thousand dollars ($1,000) for each violation, against any person who has obtained a license pursuant to this section, if it finds that the licensee has violated any provisions of this section or of any rules adopted by the Division relating to the sale of vehicles, vehicle titling, or vehicle registration. The Division may levy and collect a civil penalty, in an amount not to exceed five thousand dollars ($5,000) for each violation of any provision of this section, against any person who has not obtained a license as prescribed by this section."

Section 2. G.S. 20-288 reads as rewritten:

"**§ 20-288. Application for license; license requirements; expiration of license; bond.**

(a) A ~~person~~ new motor vehicle dealer, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler may obtain a license by filing an application with the Division. An application must be on a form provided by the Division and contain the information required by the Division. An application for a license must be accompanied by the required fee and by an application for a dealer license plate.

(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

(1) The required fee.

(2) Proof that the applicant, within the last 12 months has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license.

(3) Proof that the applicant is 21 years of age if seeking to obtain a dealer license and proof that all salespersons employed by the dealer are at least 18 years of age.

(4) The application for a dealer license plate.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall expire unless sooner revoked or suspended, ~~on June 30 of the year following date of issue.~~ on the date of expiration indicated on the license. The Division may vary the expiration dates of the licenses issued under this section so that an approximately equal number expire at the end of each month, each quarter, or any other period consisting of one or more months. The Division may issue a license that expires at the end of any monthly interval beginning at nine months and ending at 18 months.

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is twenty-five thousand dollars ($25,000) for one established salesroom of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is twenty-five thousand dollars ($25,000) for one place of business of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act

of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

Section 3. G.S. 20-289(a) reads as rewritten:

"(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each place of business.

(2) For manufacturers, one hundred dollars ($100.00), and for each factory branch in this State, seventy dollars ($70.00).

(3) For motor vehicle sales representatives, ~~ten dollars ($10.00).~~ twenty-five dollars ($25.00).

(4) For factory representatives, or distributor representatives, ten dollars ($10.00).

(5) Repealed."

Section 4. This act becomes effective June 30, 2000.

HOUSE BILL 1082:
Licensing Selling of Cars

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representative Saunders
Date:	May 6, 1999	**Summary by:**	Esther Manheimer
Version:	First Edition		Committee Counsel

Summary: House Bill 1082 makes it a Class 2 misdemeanor to violate the licensing requirements contained in G.S. 20-287 of the Motor Vehicle Dealers and Manufacturers Licensing Law. The bill would also allow for civil penalties to be assessed against those that violate the licensing requirements. Under the bill, used vehicle dealers would be required to meet additional requirements for licensure under the Motor Vehicle Dealers and Manufacturers Licensing Law. The expiration dates of licenses would become staggered. Finally, licensing fees for motor vehicle dealers, distributors, and wholesalers would increase from $50 to $100, and licensing fees for motor vehicle sales representatives would increase from $10 to $25.

BILL ANALYSIS:

Section 1. HB 1082 would make it a **Class 2 misdemeanor** for violations of the licensing requirements contained in section G.S. 20-287 of the Motor Vehicle Dealers and Manufacturers Licensing Law. The licensing requirements include such provisions as "a sales representative may have only one license." In addition, the bill would allow licensees who violate the licensure requirements or the rules adopted by DMV pertaining to the sale of vehicles, vehicle titling, and vehicle registration, to be assessed a civil penalty of $1,000 for each violation. Persons who have failed to obtain a license and violate the licensure requirements may be assessed a civil penalty of $5,000 for each violation.

Section 2. HB 1082 would require **used motor vehicle dealers** to provide additional information and fulfill **additional requirements in their application for licensure**. Under the bill, used motor vehicle dealers must:

- Show proof of completion of a **12-hour licensing course** within the last twelve months (required for an initial license), or proof of completion of a six-hour course (required for a renewal license).
- Proof that the applicant is **21 years of age** or older and all salespersons employed by the applicant are 18 years of age or older.
- Pay the required fee and provide the application for a dealer license plate (these are required under current law).

HB 1082 would also delete the provision stating that all licenses granted under this section will expire on June 30 of the year following the date of issuance, and add a provision that allows licenses to expire on staggered terms.

Section 3. Finally, HB 1082 would increase licensing fees for motor vehicle dealers, distributors, and wholesalers from $50 to $100, and would increase licensing fees for motor vehicle sales representatives from $10 to $25.

This act becomes effective June 30, 2000, and must be referred to Finance.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 246 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Thomas
)
Sen.)

moves to amend the bill on page 3, line 22

( ) WHICH CHANGES THE TITLE

by deleting the word "The" and

Substituting the following:

"Notwithstanding the provisions of subsection (b) of this section, The "

SIGNED Scott Thomas

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 246*
Judiciary I Committee Substitute Adopted 4/19/99
Third Edition Engrossed 4/20/99

Short Title: Appeal or Transfer From Clerk. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REVISE THE PROCEDURES GOVERNING APPEALS OR TRANSFERS FROM CLERKS OF SUPERIOR COURT TO THE TRIAL COURTS AND TO MAKE CONFORMING AND CLARIFYING AMENDMENTS TO OTHER RELATED SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. APPEALS AND TRANSFERS FROM THE CLERK

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

"ARTICLE 27A.

"Appeals and Transfers From the Clerk.

"**§ 1-301.1 Appeal of clerk's decision in civil actions.**

(a) Applicability. -- This section applies to orders or judgments entered by the clerk of superior court in civil actions in which the clerk exercises the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Appeal of Clerk's Order or Judgment. -- A party aggrieved by an order or judgment entered by the clerk may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a trial or hearing de novo. The order or

judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. Notice of appeal shall be filed with the clerk in writing. Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay.

(c) Duty of Judge on Appeal. -- Upon appeal, the judge may hear and determine all matters in controversy in the civil action, unless it appears to the judge that any of the following apply:

(1) The matter is one that involves an action that can be taken only by a clerk.

(2) Justice would be more efficiently administered by the judge's disposing of only the matter appealed.

When either subdivision (1) or subdivision (2) of this subsection applies, the judge shall dispose of the matter appealed and remand the action to the clerk. When subdivision (1) of this subsection applies, the judge may order the clerk to take the action.

(d) Judge's Concurrent Authority Not Affected. -- If both the judge and the clerk are authorized by law to enter an order or judgment in a matter in controversy, a party may seek to have the judge determine the matter in controversy initially.

"**§ 1-301.2. Transfer or appeal of special proceedings; exceptions.**

(a) Applicability. -- This section applies to special proceedings heard by the clerk of superior court in the exercise of the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Transfer. -- Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate court. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court.

(c) Duty of Judge on Transfer. -- Whenever a special proceeding is transferred to a court pursuant to subsection (b) of this section, the judge may hear and determine all matters in controversy in the special proceeding, unless it appears to the judge that justice would be more efficiently administered by the judge's disposing of only the matter leading to the transfer and remanding the special proceeding to the clerk.

(d) Clerk to Decide All Issues. -- If a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding.

(e) Appeal of Clerk's Decisions. -- A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment

of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

(f) Service. -- Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law.

(g) Exception for Incompetency and Foreclosure Proceedings. --

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A to the extent that the provisions of that Chapter conflict with this section.

(2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 to the extent that the provisions of that Article conflict with this section.

(h) Exception for Partition Proceedings. -- The issue whether to order the actual partition or the sale in lieu of partition of real property that is the subject of a partition proceeding shall not be transferred and shall be determined by the clerk. The clerk's order determining this issue, though not a final order, may be appealed pursuant to subsection (e) of this section.

"**§ 1-301.3. Appeal of estate matters determined by clerk.**

(a) Applicability. -- This section applies to matters arising in the administration of testamentary trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. -- In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. -- A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or judgment. The notice of appeal shall specify the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. -- Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

(1) Whether the findings of fact are supported by the evidence.

(2) Whether the conclusions of law are supported by the findings of facts.

(3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the evidentiary issue in question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence.

(e) Remand After Disposition of Issue on Appeal. -- The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) Recording of Estate Matters. -- In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk."

Section 2. G.S. 1-174, 1-272, 1-273, 1-274, 1-275, 1-276, 1-399, and 36A-28 are repealed.

PART II. CONFORMING AND CLARIFYING AMENDMENTS

Section 3. G.S. 1-242 reads as rewritten:

"**§ 1-242. Credits upon judgments.**

~~Where a~~ If payment ~~has been~~ is made on a judgment docketed in the office of the clerk of the superior ~~court,~~ court and no entry is made on the judgment docket, or ~~where any~~ if a docketed judgment ~~appealed from has been~~ is reversed or modified on appeal and no entry is made on ~~such~~ the judgment docket, any interested person ~~interested therein~~ may move in the cause before the clerk, upon affidavit after notice to all ~~persons interested,~~ interested persons, to have ~~such~~ the credit, ~~reversal~~ reversal, or modification ~~entered; and upon the hearing before the clerk he may hear affidavits,~~ entered. A hearing on the motion before the clerk may be on affidavit, oral testimony, ~~depositions~~ deposition, and any other competent ~~evidence, and~~ evidence. The clerk shall render ~~his~~ judgment, from which any party may appeal in the same manner as in appeals in special proceedings. ~~On the trial of any issue of fact on the appeal either~~ On appeal, any party may demand a jury ~~trial, which shall be had upon the evidence before the clerk, which he shall reduce to writing.~~ trial of any issue of fact. ~~On~~ If a final judgment ~~ordering any such~~ orders the credit, ~~reversal~~

reversal, or modification, a transcript ~~thereof~~ of the final judgment shall be sent by the clerk of the superior court to each county in which the original judgment ~~has been~~ is docketed, and the clerk of ~~such~~ each county shall enter the ~~same~~ transcript on the judgment docket of ~~his~~ that county opposite ~~such~~ the original judgment and file the transcript. No final process ~~shall~~ may issue on ~~any such~~ the original judgment after affidavit filed in the cause until there is a final disposition of the motion for credit, ~~reversal~~ reversal, or ~~modification has been finally disposed of.~~ modification."

Section 4. G.S. 1-408 reads as rewritten:

"**§ 1-408. Action in which clerk may allow fees of commissioners; fees taxed as costs.**

~~In all civil actions and special proceedings instituted in the superior court in which a commissioner, or commissioners, are appointed under a judgment by the clerk of said court, said clerk shall have full power and authority and he is hereby authorized and empowered to fix and determine and allow to such commissioner or commissioners a reasonable fee for their services performed under such order, decree or judgment, which fee shall be taxed as part of the costs in such action or proceeding, and any dissatisfied party shall have the right to appeal to the judge, who shall hear the same de novo.~~ In a civil action or special proceeding commenced in the superior court in which a commissioner or commissioners are appointed under an order or judgment entered by the clerk of the superior court, the clerk may fix a reasonable fee for the services of the commissioner or commissioners performed under the order or judgment. The fee shall be taxed as part of the costs in the action or proceeding. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes."

Section 5. G. S. 1-408.1 reads as rewritten:

"**§ 1-408.1. Clerk may order surveys in civil actions and special proceedings involving sale of land.**

In ~~all~~ civil actions and special proceedings ~~instituted~~ commenced in the superior court before the clerk where real property is to be sold to make assets to pay debts, or to be sold for division, or to be partitioned, the clerk may, ~~if, in his opinion,~~ if all parties to the action or proceedings will benefit ~~thereby,~~ by a survey, order a survey of the land involved, appoint a surveyor for this purpose, and fix a reasonable fee for ~~his services, which fee, along with other costs of the survey,~~ the services of the surveyor. The fee and other costs of the survey shall be taxed as a part of the costs in ~~such~~ the action or proceedings. Any ~~dissatisfied~~ aggrieved party ~~shall have~~ has the right to appeal ~~to the judge, who shall hear the same de novo.~~ as provided in Article 27A of Chapter 1 of the General Statutes."

Section 6. G.S. 1-474 reads as rewritten:

"**§ 1-474. Order of seizure and delivery to plaintiff.**

(a) Order. -- The clerk of court may, upon notice and hearing as provided in ~~G.S. 1-474.1,~~ G.S. 1-474.1 and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475, require the sheriff of the county where the property claimed is located to take ~~said~~ the property from the defendant and deliver it to the plaintiff. The act of the clerk in issuing or refusing to issue the order to the sheriff is a judicial

act and may be appealed pursuant to G.S. 1-301.1 to the judge of the district or superior court having jurisdiction of the principal action.

(b) Expiration of Certain Orders. -- When delivery of property is claimed from a debtor who allegedly defaulted on his payments for personal property purchased under a conditional sale contract, a purchase money security agreement or on a loan secured by personal property, an order of seizure and delivery to the plaintiff for that property expires 60 days after it is issued."

Section 7. G.S. 32A-14.11 reads as rewritten:

"**§ 32A-14.11. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the judge of the superior court. The procedure for appeal ~~shall be the same as the procedure for appeal in other special proceedings~~ is governed by ~~Article 33~~ Article 27A of Chapter 1 of the General Statutes. An appeal taken from the decision of the clerk ~~shall stay~~ stays the decision and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 8. G.S. 36A-27 reads as rewritten:

"**§ 36A-27. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure for appeal ~~shall be the same as in other special proceedings as now provided by law.~~ is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the ~~resignation,~~ resignation and an appeal is taken from ~~his decision, such~~ the decision of the clerk, the appeal ~~shall have the effect to stay~~ stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 9. G. S. 36A-33 reads as rewritten:

"**§ 36A-33. Appointment of successors to deceased or incapacitated trustees.**

Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk upon due investigation, finds that bond is not

necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the ~~decision~~ order or judgment of the clerk as provided in ~~G.S. 36A-27 and 36A-28.~~ Article 27A of Chapter 1 of the General Statutes.

Nothing in this section shall be construed to limit the authority of the clerk of superior court to appoint a successor trustee to a deceased or incapacitated trustee upon his own motion."

Section 10. G.S. 44A-4(b)(1) reads as rewritten:

"(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 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 escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

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. 1-399.~~ G.S. 1-301.2."

Section 11. G.S. 48-2-607(b) reads as rewritten:

"(b) ~~A party to an adoption proceeding may appeal a final decree of adoption by giving notice of appeal as provided in G.S. 1-272 and G.S. 1-279.1.~~ A party to an adoption proceeding may appeal a final decree of adoption entered by a clerk of superior court to district court by giving notice of appeal as provided in G.S. 1-301.2. A party to an adoption proceeding may appeal a judgment or order entered by a judge of district court by giving notice of appeal as provided in G.S. 1-279.1."

Section 12. G. S. 65-75(a) reads as rewritten:

"(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-74(1), (2), or (3) may commence a special proceeding by petitioning the clerk of superior court of the county in which ~~he~~ the petitioner has reasonable grounds to believe the deceased is buried, or in the case of an abandoned public cemetery, in the county in which the abandoned public cemetery is ~~located~~ located, for an order allowing ~~him~~ the petitioner to enter the property to discover, restore, maintain, or visit the grave or abandoned public cemetery. The petition shall be verified. ~~This~~ The special proceeding shall be in accordance with the provisions of ~~Article~~ Articles 27A and 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if ~~he finds that:~~ the clerk finds all of the following:

(1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or that it is reasonably necessary to enter or cross the landowner's property to reach the grave or abandoned public ~~cemetery;~~ cemetery.

(2) The petitioner, or his designee, is a descendant of the deceased, or that the petitioner has a special interest in the grave or abandoned public ~~cemetery; and~~ cemetery.

(3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner."

Section 13. G.S. 101-2 reads as rewritten:

"**§ 101-2. Procedure for changing name; petition; notice.**

A person who wishes, for good cause shown, to change his or her name must file ~~his~~ an application before the clerk of the superior court of the county in which ~~he~~ the person lives, ~~having first given~~ after giving 10 days' notice of the application by publication at the courthouse door.

~~Applications~~ An application to change the name of ~~minor children~~ a minor child may be filed by ~~their~~ the child's parent or ~~parents or guardian or~~ parents, guardian, or ~~next friend of such minor children,~~ guardian ad litem, and ~~such applications~~ this application may be joined in the application for a change of name filed by ~~their~~ the parent or ~~parents: Provided nothing herein~~ parents. Nothing in this section shall be construed to permit one parent to make ~~such~~ an application on behalf of a minor child without the consent of the other parent ~~of such minor child~~ if both parents ~~be living,~~ are living; except that a minor who has reached the age of 16 years, upon proper application to the ~~clerk~~ clerk, may change his or her ~~name,~~ name with the consent of the parent who has custody of the minor and has supported the minor,

without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. ~~Provided, further, that a~~ A change of parentage or the addition of information relating to parentage on the birth certificate of any person ~~shall be made pursuant to~~ is governed by G.S. 130A-118.

~~Notwithstanding any other provisions of this section, the~~ The consent of a parent who has abandoned a minor child ~~shall not be~~ is not required if ~~there is filed with the clerk~~ a copy of an order of a court of competent jurisdiction adjudicating that ~~such parent has abandoned such~~ parent's abandonment of the minor ~~child.~~ if filed with the clerk. ~~In the event that~~ If a court of competent jurisdiction has not ~~therefore~~ declared the minor ~~child~~ to be an abandoned child, ~~then~~ the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the ~~of not less than 10 days to the~~ parent alleged to have abandoned the child, ~~by registered or certified mail directed to such parent's last known address, the clerk of superior court is hereby authorized to~~ may determine whether ~~an abandonment has taken place.~~ the parent has abandoned the child. If ~~said~~ the parent denies that ~~an abandonment has taken place,~~ the parent abandoned the child, this issue of fact shall be transferred and determined as provided in ~~G.S. 1-273,~~ G.S. 1-301.2. ~~and if~~ If abandonment is determined, ~~then~~ the consent of ~~said~~ the parent ~~shall not be~~ is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

Section 14. G.S. 105-374(h) reads as rewritten:

"(h) Joint Foreclosure by Two or More Taxing Units. -- Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph, all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding

under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made by the clerk of the superior ~~court~~ court, subject to appeal ~~in the same manner as appeals are taken from other orders of the clerk.~~ as provided in G.S. 1-301.1."

Section 15. G. S. 105-374(k) reads as rewritten:

"(k) Judgment of Sale. -- Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or ~~so much thereof~~ as much as may be necessary for the satisfaction ~~of.~~ of all of the following:

(1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs ~~thereon; and~~ thereon.

(2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever except that the sale shall be subject to taxes the amount of which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may ~~render~~ enter the judgment, subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk.~~ as provided in G.S. 1-301.1."

Section 16. G.S. 105-374(p) reads as rewritten:

"**§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.**

(p) Judgment of Confirmation. -- At any time after the expiration of 10 days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be ~~rendered~~ entered by the clerk of superior court subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk.~~ as provided in G.S. 1-301.1."

Section 17. G.S. 156-29 reads as rewritten:

"**§156-29. Report filed; appeal and jury trial.**

A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the ~~viewers, and from the report any~~ viewers. Any landowner affected ~~thereby~~ by the report, and the person, firm, or corporation digging or cutting ~~such drainway shall have~~ the drainway, has the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within 20 days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial ~~be~~ is demanded, the clerk shall transfer the proceedings to the civil-issue ~~docket~~ docket, and it shall be heard as other civil actions. If no jury trial ~~be~~ is demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special ~~proceedings,~~ proceedings except as modified by this section, but no jury trial ~~shall~~ may be had unless demanded as ~~herein provided for.~~ provided in this section."

Section 18. G.S. 156-30 reads as rewritten:

"**§ 156-30. Confirmation of report.**

~~Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within 20 days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within 20 days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided.~~ Unless an appeal is taken, the clerk of superior court shall confirm the report of the viewers. If exceptions are filed and no jury trial is demanded, the clerk shall hear the exceptions and enter judgment as in other special proceedings. If the report is confirmed by the clerk because no exceptions or demand for a jury trial is filed, the judgment of confirmation is the judgment of the court. Any judgment entered against the person, firm, or corporation cutting or digging the drainway is a judgment against the person, firm, or corporation and against the surety on the bond required by G.S. 156-26."

Section 19. G.S. 156-55 reads as rewritten:

"**§ 156-55. Venue; special proceedings.**

When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county ~~shall have and exercise the jurisdiction herein conferred,~~ has the jurisdiction conferred by this Subchapter. ~~and the venue shall be~~ Venue is in that county in which the petition is first filed. The law and the rules regulating special proceedings ~~shall be applicable~~ apply in ~~this~~ the proceeding, ~~so far as may be practicable;~~ except as modified by this Subchapter. ~~and the~~ The proceedings ~~hereunder~~ may be ex parte or adversary."

Section 20. G.S. 156-75 reads as rewritten:

"**§ 156-75. Appeal from final hearing.**

Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted~~ The procedures for taking appeal are as provided in ~~special proceedings.~~ Article 27A of Chapter 1 of the General Statutes, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ In ~~any~~ an appeal to the superior court ~~in session or in chamber~~ taken under this section or any other section or provision of the drainage laws of the State, general or local, the ~~same shall have~~ appeal has precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the court, in its discretion, determines the order in which ~~the same shall be heard shall be determined by the court in the exercise of a sound discretion.~~ they are heard."

Section 21. G.S. 156-93.2(10) reads as rewritten:

"(10) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of the order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as provided in~~ The procedures for taking appeal ~~in special proceedings.~~ under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 ~~shall~~ apply to the appeal."

Section 22. G.S. 156-93.3(15) reads as rewritten:

"(15) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as provided~~ The procedures for taking appeal ~~in special proceedings.~~ under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 ~~shall~~ apply to the appeal."

PART III. EFFECTIVE DATE

Section 23. This act becomes effective January 1, 2000, and applies to all orders or judgments subject to this act that are entered on or after that date.

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: May 4, 1999

RE: SB 246 (Appeal or Transfer From Clerk)

General Comments

Senate Bill 246 clarifies and revises the procedures governing appeals or transfers of civil matters, special proceedings, and estate matters heard by clerks of superior court. The bill also updates language and makes clarifying and conforming amendments to other sections of the General Statutes that set out all or part of the procedures to be followed in appealing certain matters heard by clerks of superior court.

The basic statutes that govern appeals from rulings on or transfers of cases commenced before the clerk of superior court were enacted right after the Civil War, when the State was fashioning a governmental structure to secure its reentry into the union. Since those times the court system has undergone significant changes. Over the latter part of the 19th century and the first half of this century, local courts sprang up like weeds in virtually every county of the State. The result was not only a hodgepodge of local trial courts below the superior court (over 250), but also widely differing treatment of clerks of court jurisdiction as well. This resulted in a system that was not uniform in the manner in which clerks exercised jurisdiction or in the manner in which appeals from their decisions were handled.

In the 1950's and 60's, a new court system was established to deal with these and other problems in court administration. The clerks' jurisdiction was made uniform. But the statutes that governed appeals and transfers were hardly touched at all. The divergence in practice that grew during the days of local courts survived the court unification effort. This bill repeals many of those post civil war statutes and replaces them with statutes that offer the possibility of achieving a more uniform treatment of appeals and transfers.

There are three basic kinds of actions dealt with by clerks of superior court. Clerks enter orders in civil actions; typically in pre- or post-trial situations. They often preside over and enter orders and judgments in special proceedings in a wide array of cases ranging from name changes to cartway proceedings to partitions of land. All these cases share the common characteristics of needing court approval to confer a new status or to authorize the taking of some kind of action; most are uncontested. Finally, clerks are the judges of probate, and in that capacity, they preside over matters related to the estates of decedents, minors and incompetents.

Article 27 of Chapter 1 of the General Statutes provides a procedure for appeals from the clerk. It establishes a procedure for the clerk to follow in making a record that is rarely followed. The Article provides some guidance in appeals and transfers of special proceedings, but in Article 33 of Chapter 1 of the General Statutes dealing only with special proceedings, there is conflicting language in G.S. 1-399. In estate matters, where the clerk's actions have the most finality, there is virtually no statutory guidance. There are, however, two very important cases that are widely ignored but which may serve as a trap for the unwary estate lawyer who is not familiar with the cases.

Senate Bill 246 adds a new Article 27A to Chapter 1 of the General Statutes, consisting of three sections establishing general rules applicable to appeals or transfers from the clerk of superior court. The first section deals with civil actions, the second section deals with special proceedings, and the third section deals with estate matters. G.S. 1-174, 1-272 through 1-276, 1-399, and 36A-28 dealing with appeals or transfers from the clerk of superior court are repealed.

The remainder of the bill consists of clarifying and conforming changes. These changes are to statutes that set out all or part of the procedure to be followed in some specific matter to be heard by a clerk. If the specific statute establishes an unusual or exceptional rule for the specific matter, the bill generally seeks to preserve the unique rule for the specific matter.

Specific Comments

§ 1-301.1. This section deals with the clerk's handling of civil actions. It codifies the General Statutes Commission's understanding of the current practice and is consistent with current law. In most civil actions in which the clerk exercises jurisdiction, the clerk holds that power concurrently with the judge. Parties typically chose to file the matter with the clerk to get a more expeditious hearing or ruling. This section continues that general rule--subsection (d) specifies that this section in no way affects the judge's concurrent authority.

Subsection (b) provides a procedure for appealing and allows a judge or the clerk to issue a stay of the clerk's order. Subsection (b) also provides that, notwithstanding the service requirement of Rule 58 of the Rules of Civil Procedure, orders of the clerk shall be served on other parties only if otherwise required by law.

Subsection (c) specifies that the judge on appeal has the discretion to hear all matters in controversy in the civil action or to dispose of only the matter that led to the appeal. If the civil action is one that must be heard by the clerk initially, the judge must resolve only the matter appealed and remand the case for final resolution by the clerk. Subsection (b) provides that the matter is heard by the judge de novo; so there is no reason for the clerk to maintain a verbatim record of the proceeding.

§ 1-301.2. This section applies to special proceedings. Subsection (a) makes it clear that this is the default procedure, and if the statutes provide for a different procedure that specific procedure applies. Subsection (b) retains the general rule that special proceedings are to be transferred to the trial courts when issues of fact or law are raised, but it clarifies the existing law. Current G.S. 1-273 requires a transfer "if issues of law and of fact, or of fact only" are raised. G.S. 1-399 requires a transfer if a party pleads "any equitable or other defense, or ask[s] any equitable or other relief in the pleadings". Subsection (b) requires a transfer if issues of fact, equitable defenses, or equitable relief are raised in a pleading in a special proceeding or written motion in an adoption proceeding. If the matter is not pleaded but is raised in the course of hearing the special proceeding, the clerk should continue to hear the matter, and the issue may then be appealed for a de novo review pursuant to subsection (e). While the de novo standard of review on appeal is widely followed in practice, current statutes do not specify what standard is applicable on appeal. Subsection (c) specifies that the judge upon transfer has the discretion to hear all matters in controversy or to dispose of only the matter that led to the transfer and remand the special proceeding to the clerk. Subsection (d) specifies that if a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding. Subsection (e) provides a procedure for appealing, and allows a judge or the clerk to issue a stay of the clerk's order. Subsection (f) provides that, notwithstanding the service requirement of Rule 58 of the Rules of Civil Procedure, orders of the clerk shall be served on other parties only if otherwise required by law. Subsections (g) and (h) specify that three important and high volume special proceedings--incompetency determinations, foreclosures, and partitions--are not affected by § 1-301.2. All three have highly developed laws that have special rules about transfer.

§ 1-301.3. This section applies to appeals of estate matters. Estate matters are not transferred under current law. They are heard by the clerk as the judge of probate and are appealed to superior court if further review is sought. The basic law here is found in two cases, *Estate of Lowther*, 271 N.C. 345 (1967), and *Estate of Adamee,* 291 N.C. 386 (1976). *Lowther* holds that the clerk's jurisdiction is exclusive in probate matters, that the superior court has appellate jurisdiction only, and that appeal from the clerk's orders in such cases will be heard de novo by the superior court if the appellant challenges the findings of fact. If the appellant does not except to the findings, "a general exception to the judgment" presents only the question of whether the facts found support the conclusions of law". *Lowther*, 271 N.C. at 355-56. *Adamee* reaffirmed that the establishment of the district court and the uniform court system did not affect the holding in *Lowther*. Subsection (b) restates that rule, and requires the clerk to enter orders containing findings of fact and conclusions of law.

It is the Commission's impression that *Lowther* is not uniformly followed in the superior courts when estate matters are appealed. That makes an attempt to codify practice impossible. The Commission followed the basic principles established in *Lowther*. The superior court acts in an appellate capacity to review the decision of the clerk, not to conduct a de novo hearing of the matter.

Subsection (c) provides a procedure for appealing, and allows a judge or the clerk to issue a stay of the clerk's order. Subsection (c) also provides that while the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

Subsection (d) specifies the judge's duty on appeal. Subsection (d) also provides that the appellant may raise the issue of the admissibility of evidence for the first time in the superior court. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge may either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record.

Subsection (e) requires the judge, upon determining the matter appealed, to remand the case to the clerk for such further action as is necessary to administer the estate.

Subsection (f) authorizes the clerk, in the clerk's discretion or at the request of a party, to make a verbatim record of the hearing. The Commission believes that electronic recording equipment would be practical in this situation, given the very low appeal rates of estate matters. If a recordation is not made, the clerk must submit to the superior court a summary of the evidence presented to the clerk.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. _____ DATE _____

S. B. No. 272 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Saunders

moves to amend the bill on page 1, lines 2-3

(X) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"AN ACT TO AUTHORIZE THE CITIES OF WILMINGTON, GREENVILLE, GREENSBORO, AND RALEIGH, AND THE TOWNS OF HUNTERSVILLE, MATTHEWS, CHAPEL HILL, AND CORNELIUS TO USE PHOTOGRAPHIC";

~~IMAGES AS EVIDENCE~~

and on page 3, lines 21-22

by rewriting those lines to read

"~~Fayetteville only.~~ Charlotte, Fayetteville, Greenville, Wilmington, Greensboro, and Raleigh, and the Towns of Huntersville, Matthews, Chapel Hill, and Cornelius only."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 272
Judiciary I Committee Substitute Adopted 3/24/99
Third Edition Engrossed 3/30/99

Short Title: Local Photo Enforcement. (Local)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF WILMINGTON AND GREENVILLE, AND THE TOWNS OF HUNTERSVILLE AND MATTHEWS, TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-216 reads as rewritten:

"Section 2. This act applies to the ~~City of Charlotte~~ Cities of Charlotte, Greenville, and Wilmington, and the Towns of Huntersville and Matthews only."

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

adopted w/ amendment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 272
Judiciary I Committee Substitute Adopted 3/24/99
Third Edition Engrossed 3/30/99
Proposed House Committee Substitute: S272-PCSSK-002
Attention: line numbers may change after adoption.

Short Title: Local Photo Enforcement. (Local)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF WILMINGTON AND GREENVILLE, AND THE TOWNS OF HUNTERSVILLE AND MATTHEWS, TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION, AND TO PREVENT INSURANCE POINTS FROM BEING ASSESSED.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 216 of the 1997 Session Laws reads as rewritten:

" Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

'§ 160A-300.1. Use of traffic control photographic systems.

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part

of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:
   a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or
   b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the ~~vehicle.~~ vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents

of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.'"

Section 2. Section 2 of Chapter 216 of the 1997 Session Laws as amended by Chapter 17 of the 1999 Session Laws reads as rewritten:

"Section 2. This act applies to the Cities of ~~Charlotte and Fayetteville only.~~ Charlotte, Fayetteville, Greenville, and Wilmington, and the Towns of Huntersville and Matthews only."

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

Placed in SB 272 committee sub

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 398
Judiciary II Committee Substitute Adopted 4/8/99
Proposed House Committee Substitute: S398-PCSSK-002
Attention: line numbers may change after adoption.

Short Title: Red Light Cameras/Traffic Violations. (Local)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF GREENSBORO AND RALEIGH AND THE TOWNS OF CHAPEL HILL AND CORNELIUS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION, AND TO PREVENT INSURANCE POINTS FROM BEING ASSESSED.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 216 of the 1997 Session Laws reads as rewritten:

" Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

'§ 160A-300.1. Use of traffic control photographic systems.

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part

of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the ~~vehicle.~~ vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents

of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.'"

Section 2. Section 2 of Chapter 216 of the 1997 Session Laws as amended by Chapter 17 of the 1999 Session Laws reads as rewritten:

"Section 2. This act applies to the Cities of ~~Charlotte and Fayetteville only.~~ Charlotte, Fayetteville, Greensboro, and Raleigh, and to the towns of Chapel Hill and Cornelius only."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 272
Judiciary I Committee Substitute Adopted 3/24/99
Third Edition Engrossed 3/30/99
Proposed House Committee Substitute S272-PCS7682-SK

Short Title: Local Photo Enforcement. (Local)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF WILMINGTON, GREENVILLE, GREENSBORO, AND RALEIGH, AND THE TOWNS OF HUNTERSVILLE, MATTHEWS, CHAPEL HILL, AND CORNELIUS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION, AND TO PREVENT INSURANCE POINTS FROM BEING ASSESSED.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 216 of the 1997 Session Laws reads as rewritten:

"Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

'**§ 160A-300.1. Use of traffic control photographic systems.**

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system

installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the ~~vehicle.~~ vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.'"

Section 2. Section 2 of Chapter 216 of the 1997 Session Laws, as amended by Chapter 17 of the 1999 Session Laws, reads as rewritten:

"Section 2. This act applies to the Cities of ~~Charlotte and Fayetteville only.~~ Charlotte, Fayetteville, Greenville, Wilmington, Greensboro, and Raleigh, and the Towns of Huntersville, Matthews, Chapel Hill, and Cornelius only."

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

SENATE BILLS 272 AND 398: Red Light Cameras

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	SB 272 - Senator Odom
Date:	May 6, 1999		SB 398 - Senator Shaw, et al.
Version:	SB 272 - Third Edition (PCS)	**Summary by:**	Esther Manheimer
	SB 398 - Second Edition (PCS)		Committee Counsel

Bill Summary:

Both Senate Bill 272 and Senate Bill 398 amend the existing traffic control photographic system statute **to prohibit the assessment of drivers license points** against those who are photographed running a red light or stop sign and cited for the offense.

Senate Bill 272 would allow the **Cities of Greenville and Wilmington and the Towns of Huntersville and Matthews** to adopt a local ordinance to enforce traffic offenses such as running a red light or stop sign through the use of a "traffic control photographic system". Senate Bill 398 would do the same for the **Cities of Greensboro and Raleigh and the Towns of Chapel Hill and Cornelius**. A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor that works in conjunction with a traffic control device to automatically produce photographs, video or digital images of vehicles violating these types of statutes or ordinances.

The owner of a vehicle photographed would be responsible for the violation unless they can furnish evidence that, at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 shall be assessed. The citation will be mailed to the owner, with no personal service required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to a civil penalty not to exceed $100. The municipality must institute a nonjudicial administrative hearing to review objections to citations or penalties issued.

Currently this provision applies only to the Cities of Charlotte and Fayetteville.

These acts are effective when they become law.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:11 p.m. on the 19th day of June, 1997.

S.B. 741

CHAPTER 216

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"*§ 160A-300.1. Use of traffic control photographic systems.*

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

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

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law on the date it was ratified.

H.B. 103 CHAPTER 217

AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3 or any action by the county or State boards of elections, the voting precincts of Avery County shall be the 19 precincts that were in existence on January 1, 1995, provided that Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous with the 19 precincts that were in existence on January 1, 1995.

Section 2. This act shall become effective when Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-17
HOUSE BILL 50

AN ACT TO AUTHORIZE THE CITY OF FAYETTEVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 216 of the 1997 Session Laws reads as rewritten:

"Section 2. This act applies to the ~~City~~ Cities of Charlotte and Fayetteville only."

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

In the General Assembly read three times and ratified this the 7th day of April, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

VISITOR REGISTRATION SHEET

J-4 5-6-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Lisa Wilder + Crew	UNC TV
2.	Regina Bon	Bone & Moore - CH&A
3.	Vickie Betancourt	Empire Tire & Marine Dev Co.
4.	James Lee Cox	Club of Rogers Court, Dudley Court
5.	P Roy Hall	General Statutes Commission
6.	Pamela Weaver Best	AOC
7.	Joan Brannon	Institute of Government
8.	Ted. Edwards	DMV Enforcement
9.	Jim Drennan	Institute of Government
10.	Sabra McMillan	NFIS
11.	Dave Adams	Superior Court Judge
12.	Floyd M. Lewis	General Statutes Commission
13.	Kim Hibbard	NCLM
14.	Lucius PULLEN	ATTORNEY
15.		
16.		
17.		
18.		
19.		
20.		
21.		

AGENDA
JUDICIARY IV COMMITTEE
May 11, 1999

Introduce Pages

Bills:

HB 1082 Licensing Selling of Cars	Rep. Saunders
SB 246 Appeal or Transfer from Clerk	Sen. Hartsell
SB 178 Uniform Prudent Investor Act	Sen. Hartsell

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

May 11, 1999

The House Committee on Judiciary IV met on Tuesday, May 11, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Earle, Jeffus, Justus, McMahan, Mosley, Pope and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present.

The Chairman called the meeting to order and called for consideration of the following bills:

HB 1082 Licensing Selling of Cars. Rep. Saunders, bill sponsor, was recognized to explain the bill. A proposed committee substitute was adopted for purpose of discussion. After a brief discussion, Rep. Saunders sent forth an amendment to change the effective date of the bill to June 30, 2001. The amendment was adopted. Rep. Thomas sent forth an amendment to change the age for an applicant from 21 to 18. The amendment was adopted. Rep. Mosley made a motion that the amendments be put into a committee substitute, be given a favorable report, and re-referred to the Finance Committee. Motion carried.

SB 246 Appeal or Transfer from Clerk. Senator Hartsell, bill sponsor, was recognized to explain the bill. After a brief discussion, Rep. Haire moved to amend the bill (copy attached). The amendment was adopted. Rep. Culpepper moved the amendment be placed in a committee substitute and the House committee substitute be given a favorable report. Motion carried.

SB 178 Uniform Prudent Investor Act. Senator Hartsell, bill sponsor, was recognized to explain the bill. Rep. Haire moved adoption of a House committee substitute for purpose of discussion. Motion carried. After discussion and questions by the committee, the bill was temporarily displaced. No vote was taken.

The meeting adjourned at 10:45 a.m.

Representative Philp A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

Reported 5/13/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1082 A BILL TO BE ENTITLED AN ACT TO ESTABLISH PENALTIES FOR SELLING CARS IN VIOLATION OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW TO ESTABLISH EDUCATIONAL REQUIREMENTS REQUIRED FOR ISSUANCE AND RENEWAL OF LICENSURE FOR USED MOTOR VEHICLE DEALERS, AND TO INCREASE FEES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ 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.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1082 DATE _____

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

COMMITTEE SUBSTITUTE ✓

(Rep.) Saunders
(Sen.)

1 moves to amend the bill on page 5, line 20

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 "Section 4. This act becomes effective

5 June 30, 2001."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1082 DATE _____

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

COMMITTEE SUBSTITUTE ✓

(Rep.) Thomas
Sen.)

1 moves to amend the bill on page 3, line 20
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the number "21" and ~~inserting~~ substituting
4 the number "18".
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19

SIGNED Scott Thomas

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Proposed Amendments

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1082
Proposed House Committee Substitute: H1082-PCSSK-001
Attention: Line numbers may change after adoption.

Short Title: Licensing Selling of Cars. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PENALTIES FOR SELLING CARS IN VIOLATION OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW TO ESTABLISH EDUCATIONAL REQUIREMENTS REQUIRED FOR ISSUANCE AND RENEWAL OF LICENSURE FOR USED MOTOR VEHICLE DEALERS, AND TO INCREASE FEES.

Whereas, not only the setting of standards to protect purchasers of motor vehicles but also the enforcement of substantial penalties applicable when those standards are not met is one of the most effective means to obtain this protection; and

Whereas, more complex laws governing regulation of the sale and distribution of motor vehicles such as the titling of a vehicle, warranties, collection of consumer debt pursuant to Federal Trade Commission regulations, and applicable tax provisions impose a greater number of duties upon independent automobile dealers; and

Whereas, the most effective and consistent means of informing both applicants for licensure and experienced, licensed motor vehicle dealers of major changes and increasing complexities in the law is to develop a program insuring the development and requirement of appropriate continuing education; and

Whereas, to better effect these policies it is necessary to increase to more appropriate levels the fees for those persons regulated by the Motor Vehicle Dealers and Manufacturers Licensing Law; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-287 reads as rewritten:

"**§ 20-287. Licenses ~~required.~~ required; penalties.**

(a) It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of each dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an established salesroom.

(b) Any person who violates any provision of this section shall be guilty of a Class 2 misdemeanor.

(c) In addition to any other punishment or remedy under the law for any violation of this section, the Division may levy and collect a civil penalty, in an amount not to exceed one thousand dollars ($1,000) for each violation, against any person who has obtained a license pursuant to this section, if it finds that the licensee has violated any provisions of this section or of any rules adopted by the Division relating to the sale of vehicles, vehicle titling, or vehicle registration. The Division may levy and collect a civil penalty, in an amount not to exceed five thousand dollars ($5,000) for each violation of any provision of this section, against any person who has not obtained a license as prescribed by this section."

Section 2. G.S. 20-288 reads as rewritten:

"**§ 20-288. Application for license; license requirements; expiration of license; bond.**

(a) A ~~person~~ new motor vehicle dealer, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler may obtain a license by

filing an application with the Division. An application must be on a form provided by the Division and contain the information required by the Division. An application for a license must be accompanied by the required fee and by an application for a dealer license plate.

(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

(1) The required fee.

(2) Proof that the applicant, within the last 12 months has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of G.S. 20-288(a1)(2) do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers.

(3) If the applicant is an individual, proof that the applicant is at least 21 years of age, and proof that all salespersons employed by the dealer are at least 18 years of age.

(4) The application for a dealer license plate.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall expire unless sooner revoked or suspended, on June 30 of the year following date of issue.

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of less than 2500 pounds

unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is twenty-five thousand dollars ($25,000) for one established salesroom of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is twenty-five thousand dollars ($25,000) for one place of business of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or

less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

Section 3. G.S. 20-289(a) reads as rewritten:

"(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each place of business.

(2) For manufacturers, one hundred dollars ($100.00), and for each factory branch in this State, seventy dollars ($70.00).

(3) For motor vehicle sales representatives, ~~ten dollars ($10.00).~~ twenty-five dollars ($25.00).

(4) For factory representatives, or distributor representatives, ten dollars ($10.00).

(5) Repealed."

Section 4. This act becomes effective June 30, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1082
Proposed Committee Substitute H1082-PCS1268-SK

Short Title: Licensing Selling of Cars. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PENALTIES FOR SELLING CARS IN VIOLATION OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW, TO ESTABLISH EDUCATIONAL REQUIREMENTS REQUIRED FOR ISSUANCE AND RENEWAL OF LICENSURE FOR USED MOTOR VEHICLE DEALERS, AND TO INCREASE FEES.

Whereas, not only the setting of standards to protect purchasers of motor vehicles but also the enforcement of substantial penalties applicable when those standards are not met is one of the most effective means to obtain this protection; and

Whereas, more complex laws governing regulation of the sale and distribution of motor vehicles such as the titling of a vehicle, warranties, collection of consumer debt pursuant to Federal Trade Commission regulations, and applicable tax provisions impose a greater number of duties upon independent automobile dealers; and

Whereas, the most effective and consistent means of informing both applicants for licensure and experienced, licensed motor vehicle dealers of major changes and increasing complexities in the law is to develop a program insuring the development and requirement of appropriate continuing education; and

Whereas, to better effect these policies, it is necessary to increase to more appropriate levels the fees for those persons regulated by the Motor Vehicle Dealers and Manufacturers Licensing Law; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-287 reads as rewritten:

"**§ 20-287. Licenses ~~required.~~ required; penalties.**

(a) It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of each dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an established salesroom.

(b) Any person who violates any provision of this section shall be guilty of a Class 2 misdemeanor.

(c) In addition to any other punishment or remedy under the law for any violation of this section, the Division may levy and collect a civil penalty, in an amount not to exceed one thousand dollars ($1,000) for each violation, against any person who has obtained a license pursuant to this section, if it finds that the licensee has violated any provisions of this section or of any rules adopted by the Division relating to the sale of vehicles, vehicle titling, or vehicle registration. The Division may levy and collect a civil penalty, in an amount not to exceed five thousand dollars ($5,000) for each violation of any provision of this section, against any person who has not obtained a license as prescribed by this section."

Section 2. G.S. 20-288 reads as rewritten:

"**§ 20-288. Application for license; license requirements; expiration of license; bond.**

(a) A ~~person~~ new motor vehicle dealer, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler may obtain a license by filing an application with the Division. An application must be on a form provided by the Division and contain the information required by the Division. An application for a license must be accompanied by the required fee and by an application for a dealer license plate.

(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

(1) The required fee.

(2) Proof that the applicant, within the last 12 months has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of G.S. 20-288(a1)(2) do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers.

(3) If the applicant is an individual, proof that the applicant is at least 18 years of age, and proof that all salespersons employed by the dealer are at least 18 years of age.

(4) The application for a dealer license plate.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall expire unless sooner revoked or suspended, on June 30 of the year following date of issue.

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is twenty-five thousand dollars ($25,000) for one established salesroom of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is twenty-five thousand dollars ($25,000) for one place of business of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act of a license holder subject to this subsection that constitutes a violation of this Article

or Article 15 shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

Section 3. G.S. 20-289(a) reads as rewritten:

"(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each place of business.

(2) For manufacturers, one hundred dollars ($100.00), and for each factory branch in this State, seventy dollars ($70.00).

(3) For motor vehicle sales representatives, ~~ten dollars ($10.00).~~ twenty-five dollars ($25.00).

(4) For factory representatives, or distributor representatives, ten dollars ($10.00).

(5) Repealed."

Section 4. This act becomes effective June 30, 2001.

HOUSE BILL 1082:
Licensing Selling of Cars

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representative Saunders
Date:	May 11, 1999	**Summary by:**	Esther Manheimer
Version:	PCS-001		Committee Counsel

Summary: House Bill 1082 makes it a Class 2 misdemeanor to violate the licensing requirements contained in G.S. 20-287 of the Motor Vehicle Dealers and Manufacturers Licensing Law. The bill would also allow for civil penalties to be assessed against those that violate the licensing requirements. Under the bill, used vehicle dealers would be required to meet additional requirements for licensure under the Motor Vehicle Dealers and Manufacturers Licensing Law. Finally, licensing fees for motor vehicle dealers, distributors, and wholesalers would increase from $50 to $100, and licensing fees for motor vehicle sales representatives would increase from $10 to $25.

BILL ANALYSIS:

Section 1. HB 1082 would make it a **Class 2 misdemeanor** for violations of the licensing requirements contained in section G.S. 20-287 of the Motor Vehicle Dealers and Manufacturers Licensing Law. The licensing requirements include such provisions as "a sales representative may have only one license." In addition, the bill would allow licensees who violate the licensure requirements or the rules adopted by DMV pertaining to the sale of vehicles, vehicle titling, and vehicle registration, to be assessed a civil penalty of $1,000 for each violation. Persons who have failed to obtain a license and violate the licensure requirements may be assessed a civil penalty of $5,000 for each violation.

Section 2. HB 1082 would require **used motor vehicle dealers** to provide additional information and fulfill **additional requirements in their application for licensure**. Under the bill, used motor vehicle dealers must:

- Show proof of completion of a **12-hour licensing course** within the last twelve months (required for an initial license), or proof of completion of a six-hour course (required for a renewal license).
- Proof that the applicant is **21 years of age** or older and all salespersons employed by the applicant are 18 years of age or older.
- Pay the required fee and provide the application for a dealer license plate (these are required under current law).

Section 3. Finally, HB 1082 would increase licensing fees for motor vehicle dealers, distributors, and wholesalers from $50 to $100, and would increase licensing fees for motor vehicle sales representatives from $10 to $25.

This act becomes effective June 30, 2000, and must be referred to Finance.

Reported 5/13/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 246 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND REVISE THE PROCEDURES GOVERNING APPEALS OR TRANSFERS FROM CLERKS OF SUPERIOR COURT TO THE TRIAL COURTS AND TO MAKE CONFORMING AND CLARIFYING AMENDMENTS TO OTHER RELATED SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ 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

adopted

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 246

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

S246-ARG-001 Page 1 of __

Date_____,1999

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

Representative Haire

moves to amend the bill on page 9, line 1,
by rewriting the line to read:
"Section 11. G.S. 46-19 reads as rewritten:
'**§46-19. Confirmation and impeachment of report.**
(a) If no exception to the report of the commissioners is filed within 10 days, the same shall be confirmed. Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.
(b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:
(1) Confirm the report;
(2) Recommit the report for correction or further consideration;
(3) Vacate the report and direct a reappraisal by the same commissioners; or
(4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the premises and make a partition of them.
(c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of

Judge

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 246

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

S246-ARG-001 Page 2 of __

the land different from that made by the commissioners.'

Section 11.1 G.S. 48-2-607 reads as rewritten:"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 246*
Judiciary I Committee Substitute Adopted 4/19/99
Third Edition Engrossed 4/20/99

Short Title: Appeal or Transfer From Clerk. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REVISE THE PROCEDURES GOVERNING APPEALS OR TRANSFERS FROM CLERKS OF SUPERIOR COURT TO THE TRIAL COURTS AND TO MAKE CONFORMING AND CLARIFYING AMENDMENTS TO OTHER RELATED SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. APPEALS AND TRANSFERS FROM THE CLERK

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

"ARTICLE 27A.

"Appeals and Transfers From the Clerk.

"**§ 1-301.1 Appeal of clerk's decision in civil actions.**

(a) Applicability. -- This section applies to orders or judgments entered by the clerk of superior court in civil actions in which the clerk exercises the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Appeal of Clerk's Order or Judgment. -- A party aggrieved by an order or judgment entered by the clerk may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a trial or hearing de novo. The order or

judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. Notice of appeal shall be filed with the clerk in writing. Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay.

(c) Duty of Judge on Appeal. -- Upon appeal, the judge may hear and determine all matters in controversy in the civil action, unless it appears to the judge that any of the following apply:

(1) The matter is one that involves an action that can be taken only by a clerk.

(2) Justice would be more efficiently administered by the judge's disposing of only the matter appealed.

When either subdivision (1) or subdivision (2) of this subsection applies, the judge shall dispose of the matter appealed and remand the action to the clerk. When subdivision (1) of this subsection applies, the judge may order the clerk to take the action.

(d) Judge's Concurrent Authority Not Affected. -- If both the judge and the clerk are authorized by law to enter an order or judgment in a matter in controversy, a party may seek to have the judge determine the matter in controversy initially.

"**§ 1-301.2. Transfer or appeal of special proceedings; exceptions.**

(a) Applicability. -- This section applies to special proceedings heard by the clerk of superior court in the exercise of the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Transfer. -- Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate court. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court.

(c) Duty of Judge on Transfer. -- Whenever a special proceeding is transferred to a court pursuant to subsection (b) of this section, the judge may hear and determine all matters in controversy in the special proceeding, unless it appears to the judge that justice would be more efficiently administered by the judge's disposing of only the matter leading to the transfer and remanding the special proceeding to the clerk.

(d) Clerk to Decide All Issues. -- If a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding.

(e) Appeal of Clerk's Decisions. -- A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment

of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

(f) Service. -- Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law.

(g) Exception for Incompetency and Foreclosure Proceedings. --

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A to the extent that the provisions of that Chapter conflict with this section.

(2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 to the extent that the provisions of that Article conflict with this section.

(h) Exception for Partition Proceedings. -- The issue whether to order the actual partition or the sale in lieu of partition of real property that is the subject of a partition proceeding shall not be transferred and shall be determined by the clerk. The clerk's order determining this issue, though not a final order, may be appealed pursuant to subsection (e) of this section.

"**§ 1-301.3. Appeal of estate matters determined by clerk.**

(a) Applicability. -- This section applies to matters arising in the administration of testamentary trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. -- In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. -- A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or judgment. The notice of appeal shall specify the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. -- Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

(1) Whether the findings of fact are supported by the evidence.

(2) Whether the conclusions of law are supported by the findings of facts.

(3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the evidentiary issue in question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence.

(e) Remand After Disposition of Issue on Appeal. -- The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) Recording of Estate Matters. -- In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk."

Section 2. G.S. 1-174, 1-272, 1-273, 1-274, 1-275, 1-276, 1-399, and 36A-28 are repealed.

PART II. CONFORMING AND CLARIFYING AMENDMENTS

Section 3. G.S. 1-242 reads as rewritten:

"§ 1-242. Credits upon judgments.

~~Where a~~ If payment ~~has been~~ is made on a judgment docketed in the office of the clerk of the superior ~~court,~~ court and no entry is made on the judgment docket, or ~~where any~~ if a docketed judgment ~~appealed from has been~~ is reversed or modified on appeal and no entry is made on ~~such~~ the judgment docket, any interested person ~~interested therein~~ may move in the cause before the clerk, upon affidavit after notice to all ~~persons interested,~~ interested persons, to have ~~such~~ the credit, ~~reversal~~ reversal, or modification ~~entered; and upon the hearing before the clerk he may hear affidavits,~~ entered. A hearing on the motion before the clerk may be on affidavit, oral testimony, ~~depositions~~ deposition, and any other competent ~~evidence, and~~ evidence. The clerk shall render ~~his~~ judgment, from which any party may appeal in the same manner as in appeals in special proceedings. ~~On the trial of any issue of fact on the appeal either~~ On appeal, any party may demand a jury ~~trial, which shall be had upon the evidence before the clerk, which he shall reduce to writing.~~ trial of any issue of fact. ~~On~~ If a final judgment ~~ordering any such~~ orders the credit, ~~reversal~~

reversal, or modification, a transcript ~~thereof~~ of the final judgment shall be sent by the clerk of the superior court to each county in which the original judgment ~~has been~~ is docketed, and the clerk of ~~such~~ each county shall enter the ~~same~~ transcript on the judgment docket of ~~his~~ that county opposite ~~such~~ the original judgment and file the transcript. No final process ~~shall~~ may issue on ~~any such~~ the original judgment after affidavit filed in the cause until there is a final disposition of the motion for credit, ~~reversal~~ reversal, or ~~modification has been finally disposed of.~~ modification."

Section 4. G.S. 1-408 reads as rewritten:

"**§ 1-408. Action in which clerk may allow fees of commissioners; fees taxed as costs.**

~~In all civil actions and special proceedings instituted in the superior court in which a commissioner, or commissioners, are appointed under a judgment by the clerk of said court, said clerk shall have full power and authority and he is hereby authorized and empowered to fix and determine and allow to such commissioner or commissioners a reasonable fee for their services performed under such order, decree or judgment, which fee shall be taxed as part of the costs in such action or proceeding, and any dissatisfied party shall have the right to appeal to the judge, who shall hear the same de novo.~~ In a civil action or special proceeding commenced in the superior court in which a commissioner or commissioners are appointed under an order or judgment entered by the clerk of the superior court, the clerk may fix a reasonable fee for the services of the commissioner or commissioners performed under the order or judgment. The fee shall be taxed as part of the costs in the action or proceeding. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes."

Section 5. G. S. 1-408.1 reads as rewritten:

"**§ 1-408.1. Clerk may order surveys in civil actions and special proceedings involving sale of land.**

In ~~all~~ civil actions and special proceedings ~~instituted~~ commenced in the superior court before the clerk where real property is to be sold to make assets to pay debts, or to be sold for division, or to be partitioned, the clerk may, ~~if, in his opinion,~~ if all parties to the action or proceedings will benefit ~~thereby,~~ by a survey, order a survey of the land involved, appoint a surveyor for this purpose, and fix a reasonable fee for ~~his services, which fee, along with other costs of the survey,~~ the services of the surveyor. The fee and other costs of the survey shall be taxed as a part of the costs in ~~such~~ the action or proceedings. Any ~~dissatisfied~~ aggrieved party ~~shall have~~ has the right to appeal ~~to the judge, who shall hear the same de novo.~~ as provided in Article 27A of Chapter 1 of the General Statutes."

Section 6. G.S. 1-474 reads as rewritten:

"**§ 1-474. Order of seizure and delivery to plaintiff.**

(a) Order. -- The clerk of court may, upon notice and hearing as provided in ~~G.S. 1-474.1,~~ G.S. 1-474.1 and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475, require the sheriff of the county where the property claimed is located to take ~~said~~ the property from the defendant and deliver it to the plaintiff. The act of the clerk in issuing or refusing to issue the order to the sheriff is a judicial

act and may be appealed pursuant to G.S. 1-301.1 to the judge of the district or superior court having jurisdiction of the principal action.

(b) Expiration of Certain Orders. -- When delivery of property is claimed from a debtor who allegedly defaulted on his payments for personal property purchased under a conditional sale contract, a purchase money security agreement or on a loan secured by personal property, an order of seizure and delivery to the plaintiff for that property expires 60 days after it is issued."

Section 7. G.S. 32A-14.11 reads as rewritten:

"**§ 32A-14.11. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the judge of the superior court. The procedure for appeal ~~shall be the same as the procedure for appeal in other special proceedings~~ is governed by ~~Article 33~~ Article 27A of Chapter 1 of the General Statutes. An appeal taken from the decision of the clerk ~~shall stay~~ stays the decision and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 8. G.S. 36A-27 reads as rewritten:

"**§ 36A-27. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure for appeal ~~shall be the same as in other special proceedings as now provided by law.~~ is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the ~~resignation,~~ resignation and an appeal is taken from ~~his decision, such~~ the decision of the clerk, the appeal ~~shall have the effect to stay~~ stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 9. G. S. 36A-33 reads as rewritten:

"**§ 36A-33. Appointment of successors to deceased or incapacitated trustees.**

Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk upon due investigation, finds that bond is not

necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the ~~decision~~ order or judgment of the clerk as provided in ~~G.S. 36A-27 and 36A-28.~~ Article 27A of Chapter 1 of the General Statutes.

Nothing in this section shall be construed to limit the authority of the clerk of superior court to appoint a successor trustee to a deceased or incapacitated trustee upon his own motion."

Section 10. G.S. 44A-4(b)(1) reads as rewritten:

"(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.

without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. ~~Provided, further, that a~~ A change of parentage or the addition of information relating to parentage on the birth certificate of any person ~~shall be made pursuant to~~ is governed by G.S. 130A-118.

~~Notwithstanding any other provisions of this section, the~~ The consent of a parent who has abandoned a minor child ~~shall not be~~ is not required if ~~there is filed with the clerk~~ a copy of an order of a court of competent jurisdiction adjudicating that ~~such parent has abandoned such~~ parent's abandonment of the minor ~~child.~~ if filed with the clerk. ~~In the event that~~ If a court of competent jurisdiction has not ~~therefore~~ declared the minor ~~child~~ to be an abandoned child, ~~then~~ the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the ~~of not less than 10 days to the~~ parent alleged to have abandoned the child, ~~by registered or certified mail directed to such parent's last known address, the clerk of superior court is hereby authorized to~~ may determine whether ~~an abandonment has taken place.~~ the parent has abandoned the child. If ~~said~~ the parent denies that ~~an abandonment has taken place,~~ the parent abandoned the child, this issue of fact shall be transferred and determined as provided in ~~G.S. 1-273,~~ G.S. 1-301.2. ~~and if~~ If abandonment is determined, ~~then~~ the consent of ~~said~~ the parent ~~shall not be~~ is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

Section 14. G.S. 105-374(h) reads as rewritten:

"(h) Joint Foreclosure by Two or More Taxing Units. -- Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph, all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding

under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made by the clerk of the superior ~~court~~ court, subject to appeal ~~in the same manner as appeals are taken from other orders of the clerk.~~ as provided in G.S. 1-301.1."

Section 15. G. S. 105-374(k) reads as rewritten:

"(k) Judgment of Sale. -- Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or ~~so much thereof~~ as much as may be necessary for the satisfaction ~~of.~~ of all of the following:

(1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs ~~thereon; and~~ thereon.

(2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever except that the sale shall be subject to taxes the amount of which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may ~~render~~ enter the judgment, subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk.~~ as provided in G.S. 1-301.1."

Section 16. G.S. 105-374(p) reads as rewritten:

"**§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.**

(p) Judgment of Confirmation. -- At any time after the expiration of 10 days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be ~~rendered~~ entered by the clerk of superior court subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk.~~ as provided in G.S. 1-301.1."

Section 17. G.S. 156-29 reads as rewritten:

"**§156-29. Report filed; appeal and jury trial.**

A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the ~~viewers, and from the report any~~ viewers. Any landowner affected ~~thereby~~ by the report, and the person, firm, or corporation digging or cutting ~~such drainway shall have~~ the drainway, has the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within 20 days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial ~~be~~ is demanded, the clerk shall transfer the proceedings to the civil-issue ~~docket~~ docket, and it shall be heard as other civil actions. If no jury trial ~~be~~ is demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special ~~proceedings,~~ proceedings except as modified by this section, but no jury trial ~~shall~~ may be had unless demanded as ~~herein provided for.~~ provided in this section."

Section 18. G.S. 156-30 reads as rewritten:

"**§ 156-30. Confirmation of report.**

~~Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within 20 days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within 20 days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided.~~ Unless an appeal is taken, the clerk of superior court shall confirm the report of the viewers. If exceptions are filed and no jury trial is demanded, the clerk shall hear the exceptions and enter judgment as in other special proceedings. If the report is confirmed by the clerk because no exceptions or demand for a jury trial is filed, the judgment of confirmation is the judgment of the court. Any judgment entered against the person, firm, or corporation cutting or digging the drainway is a judgment against the person, firm, or corporation and against the surety on the bond required by G.S. 156-26."

Section 19. G.S. 156-55 reads as rewritten:

"**§ 156-55. Venue; special proceedings.**

When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county ~~shall have and exercise the jurisdiction herein conferred,~~ has the jurisdiction conferred by this Subchapter. ~~and the venue shall be~~ Venue is in that county in which the petition is first filed. The law and the rules regulating special proceedings ~~shall be applicable~~ apply in ~~this~~ the proceeding, ~~so far as may be practicable;~~ except as modified by this Subchapter. ~~and the~~ The proceedings ~~hereunder~~ may be ex parte or adversary."

Section 20. G.S. 156-75 reads as rewritten:

"**§ 156-75. Appeal from final hearing.**

Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted~~ The procedures for taking appeal are as provided in ~~special proceedings.~~ Article 27A of Chapter 1 of the General Statutes, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ In ~~any~~ an appeal to the superior court ~~in session or in chamber~~ taken under this section or any other section or provision of the drainage laws of the State, general or local, the ~~same shall have~~ appeal has precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the court, in its discretion, determines the order in which ~~the same shall be heard shall be determined by the court in the exercise of a sound discretion.~~ they are heard."

Section 21. G.S. 156-93.2(10) reads as rewritten:

"(10) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of the order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as provided in~~ The procedures for taking appeal ~~in special proceedings.~~ under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 ~~shall~~ apply to the appeal."

Section 22. G.S. 156-93.3(15) reads as rewritten:

"(15) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as provided~~ The procedures for taking appeal ~~in special proceedings.~~ under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 ~~shall~~ apply to the appeal."

PART III. EFFECTIVE DATE

Section 23. This act becomes effective January 1, 2000, and applies to all orders or judgments subject to this act that are entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 246*
Judiciary I Committee Substitute Adopted 4/19/99
Third Edition Engrossed 4/20/99
Proposed House Committee Substitute S246-PCS1738-RG

Short Title: Appeal or Transfer From Clerk. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REVISE THE PROCEDURES GOVERNING APPEALS OR TRANSFERS FROM CLERKS OF SUPERIOR COURT TO THE TRIAL COURTS AND TO MAKE CONFORMING AND CLARIFYING AMENDMENTS TO OTHER RELATED SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. APPEALS AND TRANSFERS FROM THE CLERK

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

"ARTICLE 27A.

"Appeals and Transfers From the Clerk.

"**§ 1-301.1. Appeal of clerk's decision in civil actions.**

(a) Applicability. -- This section applies to orders or judgments entered by the clerk of superior court in civil actions in which the clerk exercises the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Appeal of Clerk's Order or Judgment. -- A party aggrieved by an order or judgment entered by the clerk may, within 10 days of entry of the order or judgment,

appeal to the appropriate court for a trial or hearing de novo. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. Notice of appeal shall be filed with the clerk in writing. Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay.

(c) Duty of Judge on Appeal. -- Upon appeal, the judge may hear and determine all matters in controversy in the civil action, unless it appears to the judge that any of the following apply:

(1) The matter is one that involves an action that can be taken only by a clerk.

(2) Justice would be more efficiently administered by the judge's disposing of only the matter appealed.

When either subdivision (1) or subdivision (2) of this subsection applies, the judge shall dispose of the matter appealed and remand the action to the clerk. When subdivision (1) of this subsection applies, the judge may order the clerk to take the action.

(d) Judge's Concurrent Authority Not Affected. -- If both the judge and the clerk are authorized by law to enter an order or judgment in a matter in controversy, a party may seek to have the judge determine the matter in controversy initially.

"**§ 1-301.2. Transfer or appeal of special proceedings; exceptions.**

(a) Applicability. -- This section applies to special proceedings heard by the clerk of superior court in the exercise of the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Transfer. -- Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate court. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court.

(c) Duty of Judge on Transfer. -- Whenever a special proceeding is transferred to a court pursuant to subsection (b) of this section, the judge may hear and determine all matters in controversy in the special proceeding, unless it appears to the judge that justice would be more efficiently administered by the judge's disposing of only the matter leading to the transfer and remanding the special proceeding to the clerk.

(d) Clerk to Decide All Issues. -- If a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding.

(e) Appeal of Clerk's Decisions. -- A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Notice

of appeal shall be in writing and shall be filed with the clerk. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

(f) Service. -- Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law.

(g) Exception for Incompetency and Foreclosure Proceedings. --

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A to the extent that the provisions of that Chapter conflict with this section.

(2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 to the extent that the provisions of that Article conflict with this section.

(h) Exception for Partition Proceedings. -- Notwithstanding the provisions of subsection (b) of this section, the issue whether to order the actual partition or the sale in lieu of partition of real property that is the subject of a partition proceeding shall not be transferred and shall be determined by the clerk. The clerk's order determining this issue, though not a final order, may be appealed pursuant to subsection (e) of this section.

"**§ 1-301.3. Appeal of estate matters determined by clerk.**

(a) Applicability. -- This section applies to matters arising in the administration of testamentary trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. -- In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. -- A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or judgment. The notice of appeal shall specify the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the

administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. -- Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

(1) Whether the findings of fact are supported by the evidence.

(2) Whether the conclusions of law are supported by the findings of facts.

(3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the evidentiary issue in question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence.

(e) Remand After Disposition of Issue on Appeal. -- The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) Recording of Estate Matters. -- In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk."

Section 2. G.S. 1-174, 1-272, 1-273, 1-274, 1-275, 1-276, 1-399, and 36A-28 are repealed.

PART II. CONFORMING AND CLARIFYING AMENDMENTS

Section 3. G.S. 1-242 reads as rewritten:

"**§ 1-242. Credits upon judgments.**

~~Where a~~ If payment ~~has been~~ is made on a judgment docketed in the office of the clerk of the superior ~~court,~~ court and no entry is made on the judgment docket, or ~~where any~~ if a docketed judgment ~~appealed from has been~~ is reversed or modified on appeal and no entry is made on ~~such~~ the judgment docket, any interested person ~~interested therein~~ may move in the cause before the clerk, upon affidavit after notice to all ~~persons interested,~~ interested persons, to have ~~such~~ the credit, ~~reversal~~ reversal, or modification ~~entered; and upon the hearing before the clerk he may hear affidavits,~~ entered. A hearing on the motion before the clerk may be on affidavit, oral testimony, ~~depositions~~ deposition, and any other competent ~~evidence, and~~ evidence. The clerk shall render ~~his~~ judgment, from which any party may appeal in the same manner as in appeals in special proceedings. ~~On the trial of any issue of fact on the appeal either~~ On appeal, any party may demand a jury ~~trial, which shall be~~

~~had upon the evidence before the clerk, which he shall reduce to writing.~~ trial of any issue of fact. ~~On~~ If a final judgment ~~ordering any such~~ orders the credit, ~~reversal~~ reversal, or modification, a transcript ~~thereof~~ of the final judgment shall be sent by the clerk of the superior court to each county in which the original judgment ~~has been~~ is docketed, and the clerk of ~~such~~ each county shall enter the ~~same~~ transcript on the judgment docket of ~~his~~ that county opposite ~~such~~ the original judgment and file the transcript. No final process ~~shall~~ may issue on ~~any such~~ the original judgment after affidavit filed in the cause until there is a final disposition of the motion for credit, ~~reversal~~ reversal, or ~~modification has been finally disposed of.~~ modification."

Section 4. G.S. 1-408 reads as rewritten:

"**§ 1-408. Action in which clerk may allow fees of commissioners; fees taxed as costs.**

~~In all civil actions and special proceedings instituted in the superior court in which a commissioner, or commissioners, are appointed under a judgment by the clerk of said court, said clerk shall have full power and authority and he is hereby authorized and empowered to fix and determine and allow to such commissioner or commissioners a reasonable fee for their services performed under such order, decree or judgment, which fee shall be taxed as part of the costs in such action or proceeding, and any dissatisfied party shall have the right to appeal to the judge, who shall hear the same de novo.~~ In a civil action or special proceeding commenced in the superior court in which a commissioner or commissioners are appointed under an order or judgment entered by the clerk of the superior court, the clerk may fix a reasonable fee for the services of the commissioner or commissioners performed under the order or judgment. The fee shall be taxed as part of the costs in the action or proceeding. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes."

Section 5. G.S. 1-408.1 reads as rewritten:

"**§ 1-408.1. Clerk may order surveys in civil actions and special proceedings involving sale of land.**

In ~~all~~ civil actions and special proceedings ~~instituted~~ commenced in the superior court before the clerk where real property is to be sold to make assets to pay debts, or to be sold for division, or to be partitioned, the clerk may, ~~if, in his opinion,~~ if all parties to the action or proceedings will benefit ~~thereby,~~ by a survey, order a survey of the land involved, appoint a surveyor for this purpose, and fix a reasonable fee for ~~his services, which fee, along with other costs of the survey,~~ the services of the surveyor. The fee and other costs of the survey shall be taxed as a part of the costs in ~~such~~ the action or proceedings. Any ~~dissatisfied~~ aggrieved party ~~shall have~~ has the right to appeal ~~to the judge, who shall hear the same de novo.~~ as provided in Article 27A of Chapter 1 of the General Statutes."

Section 6. G.S. 1-474 reads as rewritten:

"**§ 1-474. Order of seizure and delivery to plaintiff.**

(a) Order. -- The clerk of court may, upon notice and hearing as provided in ~~G.S. 1-474.1,~~ G.S. 1-474.1 and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475, require the sheriff of the county where the property claimed is located to take ~~said~~ the property from the defendant and deliver it to the plaintiff.

The act of the clerk in issuing or refusing to issue the order to the sheriff is a judicial act and may be appealed pursuant to G.S. 1-301.1 to the judge of the district or superior court having jurisdiction of the principal action.

(b) Expiration of Certain Orders. -- When delivery of property is claimed from a debtor who allegedly defaulted on his payments for personal property purchased under a conditional sale contract, a purchase money security agreement or on a loan secured by personal property, an order of seizure and delivery to the plaintiff for that property expires 60 days after it is issued."

Section 7. G.S. 32A-14.11 reads as rewritten:

"**§ 32A-14.11. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the judge of the superior court. The procedure for appeal ~~shall be the same as the procedure for appeal in other special proceedings~~ is governed by ~~Article 33~~ Article 27A of Chapter 1 of the General Statutes. An appeal taken from the decision of the clerk ~~shall stay~~ stays the decision and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 8. G.S. 36A-27 reads as rewritten:

"**§ 36A-27. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure for appeal ~~shall be the same as in other special proceedings as now provided by law.~~ is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the ~~resignation,~~ resignation and an appeal is taken from ~~his decision, such~~ the decision of the clerk, the appeal ~~shall have the effect to stay~~ stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 9. G.S. 36A-33 reads as rewritten:

"**§ 36A-33. Appointment of successors to deceased or incapacitated trustees.**

Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve

without bond, or where the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the ~~decision~~ order or judgment of the clerk as provided in ~~G.S. 36A-27 and 36A-28.~~ Article 27A of Chapter 1 of the General Statutes.

Nothing in this section shall be construed to limit the authority of the clerk of superior court to appoint a successor trustee to a deceased or incapacitated trustee upon his own motion."

Section 10. G.S. 44A-4(b)(1) reads as rewritten:

"(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 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 escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

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. 1-399.~~ G.S. 1-301.2."

Section 11. G.S. 46-19 reads as rewritten:

"**§ 46-19. Confirmation and impeachment of report.**

(a) If no exception to the report of the commissioners is filed within 10 days, the same shall be confirmed. Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.

(b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:

(1) Confirm the report;

(2) Recommitt the report for correction or further consideration;

(3) Vacate the report and direct a reappraisal by the same commissioners; or

(4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the premises and make a partition of them.

(c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of the land different from that made by the commissioners."

Section 11.1. G.S. 48-2-607(b) reads as rewritten:

"(b) ~~A party to an adoption proceeding may appeal a final decree of adoption by giving notice of appeal as provided in G.S. 1-272 and G.S. 1-279.1.~~ A party to an adoption proceeding may appeal a final decree of adoption entered by a clerk of superior court to district court by giving notice of appeal as provided in G.S. 1-301.2. A party to an adoption proceeding may appeal a judgment or order entered by a judge of district court by giving notice of appeal as provided in G.S. 1-279.1."

Section 12. G.S. 65-75(a) reads as rewritten:

"(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-74(1), (2), or (3) may commence a special proceeding by petitioning the clerk of superior court of the county in which ~~he~~ the petitioner has reasonable grounds to believe the deceased is buried, or in the case of an abandoned public cemetery, in the county in which the abandoned public cemetery is ~~located~~ located, for an order allowing ~~him~~ the petitioner to enter the property to discover, restore, maintain, or visit the grave or abandoned public cemetery. The petition shall be verified. ~~This~~ The special proceeding shall be in accordance with the provisions of ~~Article~~ Articles 27A and 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if ~~he finds that:~~ the clerk finds all of the following:

(1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or that it is reasonably necessary to enter or cross the landowner's property to reach the grave or abandoned public ~~cemetery;~~ cemetery.

(2) The petitioner, or his designee, is a descendant of the deceased, or that the petitioner has a special interest in the grave or abandoned public ~~cemetery; and~~ cemetery.

(3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner."

Section 13. G.S. 101-2 reads as rewritten:

"**§ 101-2. Procedure for changing name; petition; notice.**

A person who wishes, for good cause shown, to change his or her name must file ~~his~~ an application before the clerk of the superior court of the county in which ~~he~~ the person lives, ~~having first given~~ after giving 10 days' notice of the application by publication at the courthouse door.

~~Applications~~ An application to change the name of ~~minor children~~ a minor child may be filed by ~~their~~ the child's parent or ~~parents or guardian or~~ parents, guardian, or ~~next friend of such minor children,~~ guardian ad litem, and ~~such applications~~ this application may be joined in the application for a change of name filed by ~~their~~ the parent or ~~parents: Provided nothing herein~~ parents. Nothing in this section shall be construed to permit one parent to make ~~such~~ an application on behalf of a minor child without the consent of the other parent ~~of such minor child~~ if both parents ~~be living,~~ are living; except that a minor who has reached the age of 16 years, upon proper application to the ~~clerk~~ clerk, may change his or her ~~name,~~ name with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. ~~Provided, further, that a~~ A change of parentage or the addition of information relating to parentage on the birth certificate of any person ~~shall be made pursuant to~~ is governed by G.S. 130A-118.

~~Notwithstanding any other provisions of this section, the~~ The consent of a parent who has abandoned a minor child ~~shall not be~~ is not required if ~~there is filed with the clerk~~ a copy of an order of a court of competent jurisdiction adjudicating that ~~such parent has abandoned such~~ parent's abandonment of the minor ~~child.~~ if filed with the clerk. ~~In the event that~~ If a court of competent jurisdiction has not ~~therefore~~ declared the minor ~~child~~ to be an abandoned child, ~~then~~ the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the ~~of not less than 10 days to the~~ parent alleged to have abandoned the child, ~~by registered or certified mail directed to such parent's last known address, the clerk of superior court is hereby authorized to~~ may determine whether ~~an abandonment has taken place.~~ the parent has abandoned the child. If ~~said~~ the parent denies that ~~an abandonment has taken place,~~ the parent abandoned the child, this issue of fact shall be transferred and determined as provided in ~~G.S. 1-273,~~ G.S. 1-301.2. ~~and if~~ If abandonment is determined, ~~then~~ the consent of ~~said~~ the parent ~~shall not be~~ is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

Section 14. G.S. 105-374(h) reads as rewritten:

"(h) Joint Foreclosure by Two or More Taxing Units. -- Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph, all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made by the clerk of the superior ~~court~~ court, subject to appeal ~~in the same manner as appeals are taken from other orders of the clerk.~~ as provided in G.S. 1-301.1."

Section 15. G.S. 105-374(k) reads as rewritten:

"(k) Judgment of Sale. -- Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or ~~so much thereof~~ as much as may be necessary for the satisfaction ~~of:~~ of all of the following:

(1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs ~~thereon; and~~ thereon.

(2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever except that the sale shall be subject to taxes the amount of which

cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may ~~render~~ enter the judgment, subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk.~~ as provided in G.S. 1-301.1."

Section 16. G.S. 105-374(p) reads as rewritten:

"§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(p) Judgment of Confirmation. -- At any time after the expiration of 10 days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be ~~rendered~~ entered by the clerk of superior court subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk.~~ as provided in G.S. 1-301.1."

Section 17. G.S. 156-29 reads as rewritten:

"§ 156-29. Report filed; appeal and jury trial.

A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the ~~viewers, and from the report any~~ viewers. Any landowner affected ~~thereby~~ by the report, and the person, firm, or corporation digging or cutting ~~such drainway shall have~~ the drainway, has the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within 20 days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial ~~be~~ is demanded, the clerk shall transfer the proceedings to the civil-issue ~~docket~~ docket, and it shall be heard as other civil actions. If no jury trial ~~be~~ is demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special ~~proceedings,~~ proceedings except as modified by this section, but no jury trial ~~shall~~ may be had unless demanded as ~~herein provided for.~~ provided in this section."

Section 18. G.S. 156-30 reads as rewritten:

"§ 156-30. Confirmation of report.

~~Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within 20 days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk~~

~~because no exceptions or demand for a jury trial were filed within 20 days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided.~~ Unless an appeal is taken, the clerk of superior court shall confirm the report of the viewers. If exceptions are filed and no jury trial is demanded, the clerk shall hear the exceptions and enter judgment as in other special proceedings. If the report is confirmed by the clerk because no exceptions or demand for a jury trial is filed, the judgment of confirmation is the judgment of the court. Any judgment entered against the person, firm, or corporation cutting or digging the drainway is a judgment against the person, firm, or corporation and against the surety on the bond required by G.S. 156-26."

Section 19. G.S. 156-55 reads as rewritten:

"**§ 156-55. Venue; special proceedings.**

When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county ~~shall have and exercise the jurisdiction herein conferred,~~ has the jurisdiction conferred by this Subchapter. ~~and the venue shall be~~ Venue is in that county in which the petition is first filed. The law and the rules regulating special proceedings ~~shall be applicable~~ apply in ~~this~~ the proceeding, ~~so far as may be practicable;~~ except as modified by this Subchapter. ~~and the~~ The proceedings ~~hereunder~~ may be ex parte or adversary."

Section 20. G.S. 156-75 reads as rewritten:

"**§ 156-75. Appeal from final hearing.**

Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted~~ The procedures for taking appeal are as provided in ~~special proceedings.~~ Article 27A of Chapter 1 of the General Statutes, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ In ~~any~~ an appeal to the superior court ~~in session or in chamber~~ taken under this section or any other section or provision of the drainage laws of the State, general or local, the ~~same shall have~~ appeal has precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the court, in its discretion, determines the order in which ~~the same shall be heard shall be determined by the court in the exercise of a sound discretion.~~ they are heard."

Section 21. G.S. 156-93.2(10) reads as rewritten:

"(10) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of the order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as~~

~~provided in~~ The procedures for taking appeal ~~in special proceedings.~~ under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 ~~shall~~ apply to the appeal."

Section 22. G.S. 156-93.3(15) reads as rewritten:

"(15) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as provided~~ The procedures for taking appeal ~~in special proceedings.~~ under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. ~~Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 ~~shall~~ apply to the appeal."

PART III. EFFECTIVE DATE

Section 23. This act becomes effective January 1, 2000, and applies to all orders or judgments subject to this act that are entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 178

Short Title: Uniform Prudent Investor Act/AB. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Uniform Prudent Investor Act.

"**§ 36A-161. Prudent investor rule; applicability.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this Article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust which govern or direct investments in a manner inconsistent with this Article. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

(c) This Article applies to express trusts, including charitable, inter vivos, and testamentary trusts, and trustees of those trusts. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this Article: 'investments in accordance with Article 15 of Chapter 36A,' 'investments permissible by law for investment of trust funds,' 'legal investments,' 'authorized investments,' 'using the judgment and

care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.' 'prudent man rule,' 'prudent trustee rule,' 'prudent person rule,' and 'prudent investor rule.'

This Article also applies where a trust contains no investment standard. A reference to 'Chapter 36A' in a trust instrument governing a trust executed prior to the effective date of this Article shall be construed to be a reference to this Article.

(d) Unless the provisions of the trust provide otherwise by specific reference to this Article, this Article does not apply to:

(1) Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

(2) Trusts which are created by legislative act and trusts which are created by or pursuant to premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

(3) Transfers under the Uniform Transfers to Minors Act;

(4) Transfers under the Uniform Custodial Trust Act; or

(5) Honorary trusts, trusts for pets, and cemetery trusts.

For the purposes of this Article, the term 'trust' excludes constructive trusts, resulting trusts, guardianships, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, and 54B-130, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interests, salaries, wages, profits, pensions or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

"§ 36A-162. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests

in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries known to the trustee;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this Article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

"**§ 36A-163. Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

"**§ 36A-164. Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this Article.

"**§ 36A-165. Loyalty.**

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

"**§ 36A-166. Impartiality.**

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

"**§ 36A-167. Investment costs.**

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

"**§ 36A-168. Reviewing compliance.**

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

"**§ 36A-169. Delegation of investment and management functions.**

(a) A trustee may delegate investment and management functions if it is prudent to do so under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of any delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

"**§ 36A-170. Effect on charitable remainder trusts.**

Nothing in this Article shall prevent the application of Article 4A of this Chapter to 'charitable remainder trusts' as defined in G.S. 36A-59.3(1).

"**§ 36A-171. Application to existing trusts.**

This Article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this Article governs only actions or omissions occurring after that date.

"**§ 36A-172. Short title.**

This Article may be cited as the 'North Carolina Uniform Prudent Investor Act.'

"**§ 36A-173. Severability.**

If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

Section 2. G.S. 36A-2 reads as rewritten:

"**§ 36A-2. Investment; prudent ~~man~~ person rule.**

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent ~~man~~ person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or expertise, ~~he~~ the fiduciary is under a duty to use those skills. This subsection and subsection (b) of this section do not apply to trusts governed by Article 15 of this Chapter.

(b) Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds,

debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(c) Notwithstanding the provisions of subsections (a) and (b) of this ~~section,~~ section and Article 15 of this Chapter, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(d) The trustee of a trust described under subsection (c) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (c) of this section shall apply to the trust. Subsection (c) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (c) of this section shall not apply."

Section 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Comments to the Uniform Prudent Investor Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 4. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 178
Proposed Committee Substitute: S178-PCSSK-001
Attention: line numbers may change after adoption.

Short Title: Uniform Prudent Investor Act/AB. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"North Carolina Uniform Prudent Investor Act.

"**§ 36A-161. Prudent investor rule; applicability.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this Article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust which govern or direct investments in a manner inconsistent with this Article. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

(c) This Article applies to express trusts, including charitable, inter vivos, and testamentary trusts, and trustees of those trusts. The following terms or comparable language in the

provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this Article: 'investments in accordance with Article 15 of Chapter 36A,' 'investments permissible by law for investment of trust funds,' 'legal investments,' 'authorized investments,' 'using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital,' 'prudent man rule,' 'prudent trustee rule,' 'prudent person rule,' and 'prudent investor rule.'

This Article also applies where a trust contains no investment standard. A reference to 'Chapter 36A' in a trust instrument governing a trust executed prior to the effective date of this Article shall be construed to be a reference to this Article.

(d) This Article does not apply:

(1) Unless the provisions of the trust provide otherwise by specific reference to this Article, to:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts which are created by legislative act;

c. Trusts which are created by or pursuant to pre marital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under the Uniform Transfers to Minors Act;

e. Transfers under the Uniform Custodial Trust Act; or

f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) To trusts imposed or required under another chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article.

(3) To:

a. Constructive trusts and resulting trusts;

b. Guardianship, conservatorship, and estates managed by personal representatives;

c. Trust accounts as defined in G.S. 53-146.2, 54-109.57, 54C-166, and 54B-130; or

d. Business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interests, salaries, wages, profits, pensions or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

"§ 36A-162. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries known to the trustee;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this Article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

"**§ 36A-163. Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

"**§ 36A-164. Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this Article.

"**§ 36A-165. Loyalty.**

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

"**§ 36A-166. Impartiality.**

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

"**§ 36A-167. Investment costs.**

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

"**§ 36A-168. Reviewing compliance.**

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

"**§ 36A-169. Delegation of investment and management functions.**

(a) A trustee may delegate investment and management functions if it is prudent to do so under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of any delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

"**§ 36A-170. Effect on charitable remainder trusts.**

Nothing in this Article shall prevent the application of Article 4A of this Chapter to 'charitable remainder trusts' as defined in G.S. 36A-59.3(1).

"**§ 36A-171. Application to existing trusts.**

This Article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this Article governs only actions or omissions occurring after that date.

"**§ 36A-172. Short title.**

This Article may be cited as the 'North Carolina Uniform Prudent Investor Act.'

"**§ 36A-173. Severability.**

If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

Section 2. G.S. 36A-2 reads as rewritten:

"**§ 36A-2. Investment; prudent ~~man~~ person rule.**

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent ~~man~~ person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or

expertise, ~~he~~ the fiduciary is under a duty to use those skills. This subsection and subsection (b) of this section do not apply to trusts governed by Article 15 of this Chapter.

(b) Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(c) Notwithstanding the provisions of subsections (a) and (b) of this ~~section,~~ section and Article 15 of this Chapter, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(d) The trustee of a trust described under subsection (c) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (c) of this section shall apply to the trust. Subsection (c) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (c) of this section shall not apply."

Section 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Comments to the Uniform Prudent Investor Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 4. This act becomes effective January 1, 2000.

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: May 6, 1999

RE: Senate Bill 178 (Uniform Prudent Investor Act)

General Comments

Senate Bill 178 is based on the Uniform Prudent Investor Act ("UPIA"), promulgated in 1994 by the National Conference of Commissioners on Uniform State Laws to update trust investment law in recognition of significant changes that have occurred in investment practices since the late 1960's. The Prefatory Note to the UPIA states that "[t]hese changes have occurred under the influence of a large and broadly accepted body of empirical and theoretical knowledge about the behavior of capital markets, often described as 'modern portfolio theory.'"

The UPIA makes the following major changes in the criteria for prudent investing:

(1) The standard of prudence is applied to investments as part of the total investment portfolio, rather than to individual investments.

(2) The tradeoff between risk and return is identified as the central consideration in making investment decisions.

(3) All categoric restrictions on types of investments are eliminated; the trustee may invest in any kind of property or type of investment consistent with the standards of the UPIA.

(4) The requirement of diversification is integrated into the definition of prudent investing.

(5) Delegation of investment and management functions to investment professionals is permitted, subject to certain safeguards.

The "prudent investor rule" is a default rule that can be modified or waived in the trust agreement. Therefore, any person who wishes to put property in trust and who wants to provide different standards of conduct for the trustee is permitted to do so under the UPIA.

About 28 states and the District of Columbia have enacted the UPIA. In addition, there are about 12 other states that have enacted prudent investor statutes predating the UPIA but based on the total investment portfolio standard, including the following southeastern states: Tennessee (Tenn. Code Ann. § 35-3-117), South Carolina (S.C. Code Ann. § 62-7-302), Georgia (Ga. Code Ann. § 53-12-287), and Florida (Fla. Stat. Ann. §§ 518.11, 518.112).

Specific Comments

Section 1. Section 1 of the bill amends Chapter 36A of the General Statutes by adding a new Article 15, entitled "Uniform Prudent Investor Act" ("Act") and consisting of §§ 36A-161 through 36A-173.

§ 36A-161. This section imposes a duty on the trustee of an express trust to comply with the prudent investor rule but provides that the rule may be expanded, restricted, eliminated, or otherwise altered by the provisions of the trust. The section also provides that certain language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Act. The section further provides that the Act does not apply to certain specified trusts, unless the trust provides otherwise by specific reference to the Act.

§ 36A-162. This section requires the trustee to "invest and manage trusts assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust." The trustee's investment and management decisions respecting individual assets are to be "evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust." The section sets forth a nonexclusive list of circumstances that the trustee is required to consider in investing and managing trust assets, including "general economic conditions," "possible effect of inflation or deflation," "expected tax consequences of investment decisions or strategies," and "expected total return from income and the appreciation of capital." The section abrogates categoric restrictions against types of investment by allowing the trustee to invest in any kind of property or type of investment consistent with the standards of the Act. The section brings forward the traditional responsibility of the fiduciary investor to examine information likely to bear importantly on the value or the security of an investment (e.g., audit reports or records of title). The section also brings forward the duty of the trustee to use special skills or expertise if the trustee has special skills or expertise or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise.

§ 36A-163. This section requires the trustee to diversify trust assets unless the trustee reasonably determines that, because of special circumstances (e.g., when the settlor mandates that the trust retain a family business), the purposes of the trust are better served without diversifying. Diversification reduces risk.

§ 36A-164. This section requires the trustee to dispose of unsuitable assets within a reasonable time after accepting a trusteeship or receiving trust assets. The question of what period of time is reasonable turns on the totality of factors affecting the asset and the trust.

§ 36A-165. This section reiterates the trustee's conventional duty of loyalty by requiring the trustee to act exclusively for the beneficiaries in investing and managing trust assets, as opposed to acting for the trustee's own interest or that of third parties.

§ 36A-166. This section imposes the duty of impartiality on the trustee where the trust has multiple beneficiaries.

§ 36A-167. This section requires the trustee to minimize costs in devising and implementing strategies for the investment and management of the trust assets. The trustee "may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee."

§ 36A-168. This section provides that compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of the trustee's decision or action and not by hindsight.

§ 36A-169. This section authorizes the trustee to delegate investment and management functions to an outside investment professional, subject to certain safeguards. Delegation is permitted if it is prudent to do so under the circumstances. The trustee must exercise reasonable care, skill, and caution in: (1) selecting the agent, (2) establishing the scope and terms of the delegation, and (3) periodically reviewing the agent's action in order to monitor the agent's performance and compliance with the terms of the delegation. The agent must exercise reasonable care in performing a delegated function and becomes subject to the jurisdiction of the courts of this State if the trust is subject to the law of this State. The trustee who complies with the standards of this section is exonerated from personal liability for the decisions or actions of the agent to whom the function was delegated.

§ 36A-170. This section provides that nothing in the Act shall prevent the application of the Charitable Remainder Trusts Administration Act (Article 4A of Chapter 36A of the General Statutes) to charitable remainder annuity trusts and charitable remainder unitrusts. The general purpose of the Charitable Remainder Trusts Administration Act is to cause such trusts to be administered in accordance with § 2055 and § 2522 of the Internal Revenue Code.

§ 36A-171. This section provides that the Act applies to trusts existing on and created after the Act's effective date. As applied to trusts existing on the Act's effective date, the Act governs only actions or omissions occurring after that date.

§ 36A-172. This section provides that the new Article 15 of Chapter 36A may be cited as the "North Carolina Uniform Prudent Investor Act."

§ 36A-173. This section is a general severability clause.

Section 2. Section 2 of the bill is a conforming amendment. It amends G.S. 36A-2 to provide that subsections (a) and (b) of that section (the prudent man rule) do not apply to trusts governed by the North Carolina Uniform Prudent Investor Act.

Section 3. Section 3 of the bill authorizes the printing of official and drafters' comments.

Section 4. Section 4 of the bill provides a delayed effective date of January 1, 2000.

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

May 11, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
James Lee Carr	Club of Supreme Court, Durham Co.
Dick Carlton	Securities Ind. Assoc.
Myth Osborne	AOC
Joan Brannon	Institute of Government
[illegible]	NC Auto Dealers
Harold Webb	" "
Jon Carr	Jordan Price
[illegible]	Bone & Assoc.
Lucius Pullen	Attorney
Floyd M. Lewis	General Statutes Commission
P. Bly Hall	" "

AGENDA

HOUSE JUDICIARY IV
May 13, 1999

INTRODUCE PAGES

CAROLYN'S LAST DAY – ELIZABETH WILL START FULL-TIME NEXT WEEK

BILLS TO CONSIDER:

SB 178 Uniform Prudent Investor Act - Sen. Hartsell

SB 272 Local Photo Enforcement (Take out Chapel Hill)

SB 871 Decedents' Estates/Funeral Expenses – Sen. Eric Reeves

SB 329 New Lapse Statute – Sen. Kay Hagan

SB 526 Mod. And Term. Of Irrevocable Trusts – Sen. Kay Hagan

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

May 13, 1999

The House Committee on Judiciary IV met on Thursday, May 13, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Jeffus, Justus and Pope.

The Chairman called the meeting to order and called for consideration of the following bills:

SB 178 Uniform Prudent Investor Act. Senator Hartsell, bill sponsor, explained the bill. Professor R. C. Link, of UNC Law School, provided additional information and responded to questions from the committee. Rep. Justus moved for a favorable report to House committee substitute and unfavorable as to original bill. Motion carried.

SB 871 Decedents' Estates/Funeral Expenses. Senator Reeves, bill sponsor, was recognized to explain the bill. Rep. Haire proposed an amendment. The amendment was adopted. Rep. Haire moved to place the amendment into a House committee substitute and moved for a favorable report as to House committee substitute and unfavorable as to original bill. Motion carried.

SB 272 Local Photo Enforcement. The Chairman announced that Rep. Hackney would like to have Chapel Hill removed from this bill. Rep. Jeffus moved to reconsider the vote on this bill. Motion passed. There was discussion about removing Raleigh as well. The bill was temporarily displaced.

SB 329 New Lapse Statute. Senator Kay Hagan, bill sponsor, was recognized to explain the bill. After a brief discussion, Rep. Bowie moved for a favorable report. Motion passed.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Carolyn Coordes
Committee Assistant

Reported 5/17/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
S.B. 178 A BILL TO BE ENTITLED AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

■ 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 178
Proposed Committee Substitute: S178-PCSSK-001
Attention: line numbers may change after adoption.

Short Title: Uniform Prudent Investor Act/AB. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"North Carolina Uniform Prudent Investor Act.

"§ 36A-161. Prudent investor rule; applicability.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this Article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust which govern or direct investments in a manner inconsistent with this Article. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

(c) This Article applies to express trusts, including charitable, inter vivos, and testamentary trusts, and trustees of those trusts. The following terms or comparable language in the

provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this Article: 'investments in accordance with Article 15 of Chapter 36A,' 'investments permissible by law for investment of trust funds,' 'legal investments,' 'authorized investments,' 'using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital,' 'prudent man rule,' 'prudent trustee rule,' 'prudent person rule,' and 'prudent investor rule.'

This Article also applies where a trust contains no investment standard. A reference to 'Chapter 36A' in a trust instrument governing a trust executed prior to the effective date of this Article shall be construed to be a reference to this Article.

(d) This Article does not apply:

(1) Unless the provisions of the trust provide otherwise by specific reference to this Article, to:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts which are created by legislative act;

c. Trusts which are created by or pursuant to pre marital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under the Uniform Transfers to Minors Act;

e. Transfers under the Uniform Custodial Trust Act; or

f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) To trusts imposed or required under another chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article.

(3) To:

a. Constructive trusts and resulting trusts;

b. Guardianship, conservatorship, and estates managed by personal representatives;

c. Trust accounts as defined in G.S. 53-146.2, 54-109.57, 54C-166, and 54B-130; or

d. Business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interests, salaries, wages, profits, pensions or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

"§ 36A-162. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries known to the trustee;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this Article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

"§ 36A-163. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

"§ 36A-164. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this Article.

"§ 36A-165. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

"§ 36A-166. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

"§ 36A-167. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

"§ 36A-168. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

"§ 36A-169. Delegation of investment and management functions.

(a) A trustee may delegate investment and management functions if it is prudent to do so under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of any delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

"§ 36A-170. Effect on charitable remainder trusts.

Nothing in this Article shall prevent the application of Article 4A of this Chapter to 'charitable remainder trusts' as defined in G.S. 36A-59.3(1).

"§ 36A-171. Application to existing trusts.

This Article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this Article governs only actions or omissions occurring after that date.

"§ 36A-172. Short title.

This Article may be cited as the 'North Carolina Uniform Prudent Investor Act.'

"§ 36A-173. Severability.

If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

Section 2. G.S. 36A-2 reads as rewritten:

"§ 36A-2. Investment; prudent ~~man~~ person rule.

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent ~~man~~ person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or

expertise, ~~he~~ the fiduciary is under a duty to use those skills. This subsection and subsection (b) of this section do not apply to trusts governed by Article 15 of this Chapter.

(b) Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(c) Notwithstanding the provisions of subsections (a) and (b) of this ~~section,~~ section and Article 15 of this Chapter, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(d) The trustee of a trust described under subsection (c) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (c) of this section shall apply to the trust. Subsection (c) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (c) of this section shall not apply."

Section 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Comments to the Uniform Prudent Investor Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 4. This act becomes effective January 1, 2000.

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

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: May 6, 1999

RE: Senate Bill 178 (Uniform Prudent Investor Act)

General Comments

Senate Bill 178 is based on the Uniform Prudent Investor Act ("UPIA"), promulgated in 1994 by the National Conference of Commissioners on Uniform State Laws to update trust investment law in recognition of significant changes that have occurred in investment practices since the late 1960's. The Prefatory Note to the UPIA states that "[t]hese changes have occurred under the influence of a large and broadly accepted body of empirical and theoretical knowledge about the behavior of capital markets, often described as 'modern portfolio theory.'"

The UPIA makes the following major changes in the criteria for prudent investing:

(1) The standard of prudence is applied to investments as part of the total investment portfolio, rather than to individual investments.

(2) The tradeoff between risk and return is identified as the central consideration in making investment decisions.

(3) All categoric restrictions on types of investments are eliminated; the trustee may invest in any kind of property or type of investment consistent with the standards of the UPIA.

(4) The requirement of diversification is integrated into the definition of prudent investing.

(5) Delegation of investment and management functions to investment professionals is permitted, subject to certain safeguards.

The "prudent investor rule" is a default rule that can be modified or waived in the trust agreement. Therefore, any person who wishes to put property in trust and who wants to provide different standards of conduct for the trustee is permitted to do so under the UPIA.

About 28 states and the District of Columbia have enacted the UPIA. In addition, there are about 12 other states that have enacted prudent investor statutes predating the UPIA but based on the total investment portfolio standard, including the following southeastern states: Tennessee (Tenn. Code Ann. § 35-3-117), South Carolina (S.C. Code Ann. § 62-7-302), Georgia (Ga. Code Ann. § 53-12-287), and Florida (Fla. Stat. Ann. §§ 518.11, 518.112).

Specific Comments

Section 1. Section 1 of the bill amends Chapter 36A of the General Statutes by adding a new Article 15, entitled "Uniform Prudent Investor Act" ("Act") and consisting of §§ 36A-161 through 36A-173.

§ 36A-161. This section imposes a duty on the trustee of an express trust to comply with the prudent investor rule but provides that the rule may be expanded, restricted, eliminated, or otherwise altered by the provisions of the trust. The section also provides that certain language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Act. The section further provides that the Act does not apply to certain specified trusts, unless the trust provides otherwise by specific reference to the Act.

§ 36A-162. This section requires the trustee to "invest and manage trusts assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust." The trustee's investment and management decisions respecting individual assets are to be "evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust." The section sets forth a nonexclusive list of circumstances that the trustee is required to consider in investing and managing trust assets, including "general economic conditions," "possible effect of inflation or deflation," "expected tax consequences of investment decisions or strategies," and "expected total return from income and the appreciation of capital." The section abrogates categoric restrictions against types of investment by allowing the trustee to invest in any kind of property or type of investment consistent with the standards of the Act. The section brings forward the traditional responsibility of the fiduciary investor to examine information likely to bear importantly on the value or the security of an investment (e.g., audit reports or records of title). The section also brings forward the duty of the trustee to use special skills or expertise if the trustee has special skills or expertise or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise.

§ 36A-163. This section requires the trustee to diversify trust assets unless the trustee reasonably determines that, because of special circumstances (e.g., when the settlor mandates that the trust retain a family business), the purposes of the trust are better served without diversifying. Diversification reduces risk.

§ 36A-164. This section requires the trustee to dispose of unsuitable assets within a reasonable time after accepting a trusteeship or receiving trust assets. The question of what period of time is reasonable turns on the totality of factors affecting the asset and the trust.

§ 36A-165. This section reiterates the trustee's conventional duty of loyalty by requiring the trustee to act exclusively for the beneficiaries in investing and managing trust assets, as opposed to acting for the trustee's own interest or that of third parties.

§ 36A-166. This section imposes the duty of impartiality on the trustee where the trust has multiple beneficiaries.

§ 36A-167. This section requires the trustee to minimize costs in devising and implementing strategies for the investment and management of the trust assets. The trustee "may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee."

§ 36A-168. This section provides that compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of the trustee's decision or action and not by hindsight.

§ 36A-169. This section authorizes the trustee to delegate investment and management functions to an outside investment professional, subject to certain safeguards. Delegation is permitted if it is prudent to do so under the circumstances. The trustee must exercise reasonable care, skill, and caution in: (1) selecting the agent, (2) establishing the scope and terms of the delegation, and (3) periodically reviewing the agent's action in order to monitor the agent's performance and compliance with the terms of the delegation. The agent must exercise reasonable care in performing a delegated function and becomes subject to the jurisdiction of the courts of this State if the trust is subject to the law of this State. The trustee who complies with the standards of this section is exonerated from personal liability for the decisions or actions of the agent to whom the function was delegated.

§ 36A-170. This section provides that nothing in the Act shall prevent the application of the Charitable Remainder Trusts Administration Act (Article 4A of Chapter 36A of the General Statutes) to charitable remainder annuity trusts and charitable remainder unitrusts. The general purpose of the Charitable Remainder Trusts Administration Act is to cause such trusts to be administered in accordance with § 2055 and § 2522 of the Internal Revenue Code.

§ 36A-171. This section provides that the Act applies to trusts existing on and created after the Act's effective date. As applied to trusts existing on the Act's effective date, the Act governs only actions or omissions occurring after that date.

§ 36A-172. This section provides that the new Article 15 of Chapter 36A may be cited as the "North Carolina Uniform Prudent Investor Act."

§ 36A-173. This section is a general severability clause.

Section 2. Section 2 of the bill is a conforming amendment. It amends G.S. 36A-2 to provide that subsections (a) and (b) of that section (the prudent man rule) do not apply to trusts governed by the North Carolina Uniform Prudent Investor Act.

Section 3. Section 3 of the bill authorizes the printing of official and drafters' comments.

Section 4. Section 4 of the bill provides a delayed effective date of January 1, 2000.

Reported 5/18

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
S.B. 871 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING THE OBLIGATION OF DECEDENTS' ESTATES FOR FUNERAL EXPENSES AND RELATED EXPENSES.

☐ 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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. First

H. B. No. _____ DATE _____

S. B. No. 871 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page i, line 11

( ) WHICH CHANGES THE TITLE

by inserting between the words "estate" and the word "any" the word "of".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Passed as amended

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 871

Short Title: Decedents' Estates/Funeral Expenses. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE OBLIGATION OF DECEDENTS' ESTATES FOR FUNERAL EXPENSES AND RELATED EXPENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-19-8 reads as rewritten:

"**§ 28A-19-8. Funeral expenses of decedent.**

Any person authorized under G.S. 130A-420 to dispose of a decedent's body may bind a decedent's estate for funeral expenses and related charges, including interest and finance charges, in accordance with this section, including the execution and delivery on behalf of the estate any agreements, promissory notes, and other instruments relating to the estate. Whether or not a personal representative of the estate has been appointed at the time the expenses are incurred, funeral ~~Funeral~~ expenses of a ~~decedent~~ decedent, together with interest or finance charges if financed by the funeral establishment or a third-party creditor, shall be considered as an obligation of the estate of the decedent and the decedent's estate shall be primarily liable ~~therefor.~~ for those expenses to the funeral establishment that provided the funeral service, to any third-party creditor that finances the payment of those expenses, or to any other person described in this section who has paid such expenses.

(b) The provisions of this section shall not affect the application of ~~G.S. 28A-19-6.~~ G.S. 28A-19-6 or G.S. 130A-420."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 871:
DECEDENT'S ESTATES/FUNERAL EXPENSES

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Sen. Reeves
		Summary by:	Tim Hovis Committee Counsel
Date:	May 12, 1999		
Version:	First Edition		

Current law states that the funeral expenses of a decedent are an obligation of the decedent's estate, and the decedent's estate is primarily liable for those expenses.

Senate Bill 871 amends this law to provide the following:

- That any person authorized by law to dispose of a decedent's body can bind the decedent's estate for funeral expenses and related charges, including the execution and delivery on behalf of the estate of any agreements, promissory notes, and other instruments relating to the estate. The following are authorized by law (GS 130A-420) to determine how to dipose of a decedent's body, in the following order of priority:
    - By a person acting in the manner specified in the decdedent's will, health care power of attorney, preneed funeral contract, cremation authorization form, or other witnessed written instrument.
    - The surviving spouse
    - A majority of the surviving children
    - The surviving parents
    - A majority of the surviving siblings
    - A majority of the persons in the classes of next degree of kinship (as determined by intestacy laws)
    - A person who has exhibited special care for the decedent and is willing and able to make decisions about the disposition.
- That funeral expenses for which the estate is primarily liable include interest or finance charges on those expenses that were financed by a funeral establishment or third party creditor.
- That the estate is obligated for payment of the expenses to the funeral establishment, the third party creditor, or to any other person authorized to dipose of the body who incurred such expenses.
- That the estate can be bound for the payment of funeral expenses regardless of whether the personal representative of the estate has been appointed at the time the expenses are incurred.

The current law provides that funeral expenses of up to $2,500 are second on the list of priorities for claims against the estate (coming after the payment of the estate administration expenses). The bill does not change this provision of the law.

The act would take effect October 1, 1999.

This summary was contributed to by Mr. Linwood Jones, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 272
Judiciary I Committee Substitute Adopted 3/24/99
Third Edition Engrossed 3/30/99
Proposed House Committee Substitute S272-PCSSK-004

Short Title: Local Photo Enforcement. (Local)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF WILMINGTON, GREENVILLE, GREENSBORO, AND RALEIGH, AND THE TOWNS OF HUNTERSVILLE, MATTHEWS, AND CORNELIUS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION, AND TO PREVENT INSURANCE POINTS FROM BEING ASSESSED.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 216 of the 1997 Session Laws reads as rewritten:

"Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

'**§ 160A-300.1. Use of traffic control photographic systems.**

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part

of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the ~~vehicle.~~ vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents

of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.'"

Section 2. Section 2 of Chapter 216 of the 1997 Session Laws, as amended by Chapter 17 of the 1999 Session Laws, reads as rewritten:

"Section 2. This act applies to the Cities of ~~Charlotte and Fayetteville only.~~ Charlotte, Fayetteville, Greenville, Wilmington, Greensboro, and Raleigh, and the Towns of Huntersville, Matthews, and Cornelius only."

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

Reported 5/13/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 329 A BILL TO BE ENTITLED AN ACT TO MAKE NORTH CAROLINA'S LAPSE STATUTE LESS RESTRICTIVE.

☒ 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

Gasaway

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 329
Judiciary II Committee Substitute Adopted 3/24/99

Short Title: New Lapse Statute. (Public)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE NORTH CAROLINA'S LAPSE STATUTE LESS RESTRICTIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31-42 reads as rewritten:

"**§ 31-42. Failure of devises ~~and legacies~~ by lapse or otherwise; renunciation.**

~~(a) Unless a contrary intent is indicated by the will, where a devise or legacy of any interest in property is given to a person as an individual or as a member of a class and the person dies survived by qualified issue before the testator dies, then the qualified issue of such deceased person that survive the testator shall represent the deceased person, and the entire interest that the deceased person would have taken had he survived the testator shall pass by substitution to his qualified issue. The qualified issue shall take pursuant to the preceding sentence regardless of whether or not the deceased person dies before or after the making of the will. Where a devise or legacy of any interest in property is given to a person as a member of a class and the person predeceases the testator and is not survived by qualified issue, then, unless a contrary intent is indicated by the will, the entire interest of such person shall devolve upon the members of the class who survived the testator and the qualified issue of any members of the class who predeceased the testator, taking by substitution as herein provided.~~

~~(b) The term "qualified issue" as used in subsection (a) means issue of the deceased person who would have been an heir of the testator under the provisions of the Intestate Succession Act had there been no will.~~

~~(c) If subsection (a) is not applicable and if a contrary intent is not indicated by the will:~~

~~(1) Where a devise or legacy of any interest in property is void, is revoked, or lapses or which for any other reason fails to take effect, such a devise or legacy shall pass:~~

~~a. Under the residuary clause of the will applicable to real property in case of such devise, or applicable to personal property in case of such legacy, or~~

~~b. As if the testator had died intestate with respect thereto when there is no such applicable residuary clause; and~~

~~(2) Where a residuary devise or legacy is void, revoked, lapsed or for any other reason fails to take effect with respect to any devisee or legatee named in the residuary clause itself or a member of a class described therein, then such devise or legacy shall continue as a part of the residue and shall pass to the other residuary devisees or legatees if any; or, if none, shall pass as if the testator had died intestate with respect thereto.~~

~~(d) Renunciation of a devise or legacy shall be as provided for in Chapter 31B of the General Statutes.~~

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class devise, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes.

(d) As used in this section, 'devisee' means any person entitled to take real or personal property under the provisions of a will."

Section 2. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

NORTH CAROLINA
1899 – 1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

Senate Bill 329 - New Lapse Statute (N.C.G.S. §31-42)

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GREENSBORO, NC 27420-1927

PRESIDENT-ELECT
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RALEIGH, NC 27602-2611

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A lapse statute (sometimes called an antilapse statute) is a statute that substitutes someone for a devisee (one receiving something under a will) who dies before the testator (the person who made the will and died) when the drafter neglected to do so. Statutes in most other states substitute the issue (children) of the predeceased devisee if the predeceased devisee is related to the decedent at least through the grandparents.

Many practitioners believe that North Carolina's lapse statute is too restrictive. Instead of focusing on the relationship between the testator and the predeceased devisee, it focuses on the relationship between the person substituted (substituted taker) and the testator. It requires that the substituted taker be someone who would have been the testator's heir had the testator died without a will. This has been interpreted to mean what it says -- i.e., "would have been", not "could have been". *See Wachovia Bank v. Shelton*, 229 N.C. 150, 48 S.E. 2d 41 (1948).

For example, assume T devised property to his brother, B. Assume that B predeceased T, but B had a child, N, who survived T. In North Carolina B's child N, who is T's nephew, will not be substituted for B if B is survived by a spouse or lineal descendants because N would not have been an heir. Only if T is not survived by a spouse or lineal descendants or parents will N take.

The reasoning behind the current statute seems to have been that T would want closer relatives to take instead of N. However, there is no guarantee that they will take under the current law if they are not residuary devisees. If T leaves the bulk of his estate to his brother, and the residue to the American Kennel Club, and T is survived by a lineal descendant, the American Kennel Club will get the entire estate if his brother predeceases him. SB 329 would fix this problem and more closely effectuate T's intent to substitute his brother's children.

Obviously this is not a problem that will arise with a well-drafted will. It is a homemade will problem. SB 329 would substitute the issue of the predeceased devisee if the predeceased devisee is related to the testator through the grandparents in those instances.

For more information, please contact Professor Patricia Roberts, Wake Forest University School of Law, (336) 759-5707, or the NCBA Governmental Affairs Office, (919) 677-0561.

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SENATE BILL 329:
New Lapse Statute

BILL ANALYSIS

Committee: House Judiciary IV Committee
Date: May 12, 1999
Version: Second Edition

Introduced by: Senator Hagan
Summary by: Tim Hovis
Committee Counsel

SUMMARY: Senate Bill 329 rewrites the State's anti-lapse statute. The bill changes the criteria that determine whether the children of a person who dies, or is otherwise disqualified, before taking property under a will can be substituted for the person who was named in the will.

CURRENT LAW: Under current law[1], a deceased or otherwise disqualified devisee's issue (children) can take property in place of the deceased or disqualified devisee if they would have otherwise received an inheritance from the testator had the testator died without a will.

BILL ANALYSIS: Senate Bill 329 changes this rule. Instead of looking to see whether the deceased or disqualified devisee's issue could have taken under the intestacy statute, the new test is whether the devisee is a grandparent or a descendant of a grandparent of the testator. If so, the issue of the predeceased devisee shall take in place of the devisee.

BACKGROUND: The anti-lapse statute addresses the situation that occurs when someone named in a will dies before the testator (the person making the will).

At common law, an attempted testamentary gift was ineffective if the intended donee died before the testator.[2] If the intended donee died after the will was executed, the gift was said to "lapse;" if they died before the will was executed it was "void."[3]

With the introduction of anti-lapse statutes, these results changed. Under current law and under the proposed change envisioned by Senate Bill 329, unless there is a contrary intent expressed in the will, such gifts would not "lapse," nor be "void." Instead, the contemplated gifts would either go to the intended donee's issue or they would be transferred under the will's residuary clause.

This summary was contributed to by Mr. Ed Rossi, Staff Attorney.

[1] G.S. § 31-42.
[2] Gratuitous Transfers 3rd Ed. P.360.
[3] Id.

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

MAY 13, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Pamela Weaver Best	AOC
P. Bay Hall	General Statutes Commission
Prof. R.C. Link	UNC Law School
L E Harrell	NC Bar Association
[illegible]	First Citizens Bank
Floyd M. Lewis	General Statutes Commission
Marshall Lindsay	Jordan Price
Deborah Ross	ACLU

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

May 18, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, May 18, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, Pope , and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and called for consideration of the following bill:

SB 272 Local Photo Enforcement. Rep. Saunders moved for adoption of the proposed committee substitute for purposes of discussion. Motion passed. Following a brief discussion, Rep. Saunders moved for a favorable report as to House committee substitute bill and unfavorable as to Senate committee substitute bill. Motion carried.

The meeting adjourned at 10:20 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 5/18/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 272 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITIES OF WILMINGTON AND GREENVILLE, AND THE TOWNS OF HUNTERSVILLE AND MATTHEWS, TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ 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

passed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 272
Judiciary I Committee Substitute Adopted 3/24/99
Third Edition Engrossed 3/30/99
Proposed House Committee Substitute S272-PCSSK-005

Short Title: Local Photo Enforcement. (Local)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF WILMINGTON, GREENVILLE, AND GREENSBORO, AND THE TOWNS OF HUNTERSVILLE, MATTHEWS, AND CORNELIUS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION, AND TO PREVENT INSURANCE POINTS FROM BEING ASSESSED.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 216 of the 1997 Session Laws reads as rewritten:

"Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

'**§ 160A-300.1. Use of traffic control photographic systems.**

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part

of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the ~~vehicle.~~ vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents

of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.'"

Section 2. Section 2 of Chapter 216 of the 1997 Session Laws, as amended by Chapter 17 of the 1999 Session Laws, reads as rewritten:

"Section 2. This act applies to the Cities of ~~Charlotte and Fayetteville only.~~ Charlotte, Fayetteville, Greenville, Wilmington, and Greensboro, and the Towns of Huntersville, Matthews, and Cornelius only."

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

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

May 18, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	Attorney
Jon McCormick	Attorney

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

May 20, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, May 20, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Jeffus, Justus, McMahan, Mosley, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

HB 1222 State Judicial Council/Funds. Rep. Baddour, bill sponsor, asked Rep. Thomas to take the chair while he explained the bill. Rep. Justus moved to adopt the committee substitute for purposes of discussion. Motion passed. Rep. Baddour was recognized to explain the bill, a staff summary is attached. The chair recognized Chief Justice Burley Mitchell for comments on the bill. Following discussion and debate, the bill was displaced. No vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1222*

Short Title: State Judicial Council/Funds. (Public)

Sponsors: Representatives Baddour; Culpepper, Daughtry, and McMahan (Primary Sponsors).

Referred to: Judiciary IV, if favorable, Appropriations.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE COURT SYSTEM BY CREATING A STATE JUDICIAL COUNCIL AND TO APPROPRIATE FUNDS FOR THE EXPENSES OF THE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"State Judicial Council.

"**§ 7A-49.4. Composition of State Judicial Council.**

(a) The State Judicial Council shall consist of 19 members as follows:

(1) The Chief Justice, who chairs the Council;

(2) The Chief Judge of the Court of Appeals;

(3) A district attorney chosen by the Conference of District Attorneys;

(4) A public defender chosen by the public defenders;

(5) A superior court judge chosen by the Conference of Superior Court Judges;

(6) A district court judge chosen by the Conference of District Court Judges;

(7) A clerk of superior court chosen by the Association of Clerks of Superior Court of North Carolina;

(8) An attorney appointed by the Council of the State Bar;

(9) One attorney and one nonattorney appointed by the Chief Justice;

(10) Two nonattorneys and one attorney appointed by the Governor;
(11) Two nonattorneys and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(12) Two nonattorneys and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

(1) One year. -- The district court judge, the nonattorney appointed by the Chief Justice, one nonattorney appointed upon the recommendation of the Speaker of the House of Representatives, and the attorney appointed upon the recommendation of the President Pro Tempore of the Senate.
(2) Two years. -- The district attorney, one nonattorney appointed by the Governor, the attorney appointed upon the recommendation of the Speaker of the House of Representatives, and one nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate.
(3) Three years. -- The public defender, the attorney appointed by the Governor, one nonattorney appointed by the President Pro Tempore of the Senate, and one nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.
(4) Four years. -- The superior court judge, the clerk of superior court, the attorney appointed by the State Bar Council, the attorney appointed by the Chief Justice, and one nonattorney appointed by the Governor.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent member of the General Assembly or any incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group.

"**§ 7A-49.5. Duties of the State Judicial Council.**

(a) The State Judicial Council shall:

(1) Study the judicial system and report periodically to the Chief Justice on its findings, particularly in light of the observations and recommendations of the Commission for the Future of Justice and the Courts in North Carolina;
(2) Advise the Chief Justice on priorities for funding;
(3) Review and advise the Chief Justice on the budget prepared by the Director of the Administrative Office of the Courts for submission to the General Assembly;
(4) Study and recommend to the General Assembly the salaries of justices and judges;
(5) Recommend to the General Assembly changes in the expense allowances, benefits, and other compensation for judicial officials;
(6) If a judgeship becomes vacant, review whether the judgeship is still needed for that district and, if it is not, recommend to the Chief Justice whether the judgeship should be transferred to another district or should be abolished; and
(7) Advise or assist the Chief Justice, as requested, on any other matter concerning the operation of the courts.

(b) If requested to do so by the Governor, the 12 members of the State Judicial Council who are not judges, district attorneys, public defenders, or clerks of superior court shall constitute an appellate nominating panel to nominate candidates to the Governor for appointment to vacancies on the Supreme Court and Court of Appeals.

(c) The State Judicial Council, with the assistance of the Director of the Administrative Office of the Courts, shall recommend to the Chief Justice performance standards for all courts and all judicial officials and shall recommend procedures for periodic evaluation of the court system and individual judicial officials and employees. If these standards are implemented by the Chief Justice, the Director of the Administrative Office of the Courts shall inform each judicial official of the standards being used to evaluate that official's performance. If implemented, the evaluation of each judge shall include assessments from other judges, litigants, jurors, and attorneys, as well as a self-evaluation by the judge. Summaries of the evaluations of justices and judges shall be made available to the public, in a manner to be determined by the Council, but the data collected in producing the evaluations shall not be a public record.

(d) The State Judicial Council shall monitor caseloads in the appellate courts to determine whether cases are being handled expeditiously, whether those courts have adequate resources, and whether the courts are able to maintain a proper balance between criminal and civil matters. If needed to assure such a balance, the Council may recommend the establishment of separate divisions of the Court of Appeals for criminal and civil cases and establish procedures for the regular rotation of individual judges between those divisions.

(e) The State Judicial Council shall study and recommend guidelines for the assignment and management of cases, including the identification of different kinds of cases for different kinds of resolution. If the Chief Justice decides to implement these

guidelines, they may provide that, except for good cause, each civil case subject to assignment to a trial judge should be directed first to an appropriate form of alternative dispute resolution. The guidelines may also provide for posttrial alternative dispute resolution before or as part of an appeal. The guidelines should not require absolute uniformity from district to district and should allow case management personnel within each circuit the flexibility to direct cases to the most appropriate means of resolution in that district.

(f) The State Judicial Council shall monitor the use of alternative dispute resolution throughout the court system and, with the assistance of the Director of the Administrative Office of the Courts and the Dispute Resolution Commission, evaluate the effectiveness of those programs.

(g) The State Judicial Council may recommend to the Chief Justice changes in the boundaries of the judicial districts or divisions.

(h) The State Judicial Council shall perform other functions as needed to monitor the administration of justice and assess the effectiveness of the Judicial Branch in serving the public and to advise the Chief Justice and the General Assembly on changes needed to assist the General Court of Justice in better fulfilling its mission.

"**§ 7A-49.6. Compensation of the State Judicial Council.**

Members of the State Judicial Council who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the State Judicial Council who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6. Members of the State Judicial Council who are legislators shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1."

Section 2. There is appropriated from the General Fund to the Judicial Department the sum of twenty-five thousand dollars ($25,000) for the 1999-2000 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2000-2001 fiscal year to reimburse members of the State Judicial Council for subsistence and travel expenses as provided in G.S. 7A-49.6.

Section 3. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1222*
Proposed Committee Substitute H1222-PCSLL-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Judicial Council/Funds. (Public)

Sponsors:

Referred to: Judiciary IV, if favorable, Appropriations.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE COURT SYSTEM BY CREATING A STATE JUDICIAL COUNCIL AND TO APPROPRIATE FUNDS FOR THE EXPENSES OF THE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"State Judicial Council.

"§ 7A-49.4. Composition of State Judicial Council.

(a) The State Judicial Council shall consist of 17 members as follows:

(1) The Chief Justice, who chairs the Council;

(2) The Chief Judge of the Court of Appeals;

(3) A district attorney chosen by the Conference of District Attorneys;

(4) A public defender chosen by the public defenders;

(5) A superior court judge chosen by the Conference of Superior Court Judges;

(6) A district court judge chosen by the Conference of District Court Judges;

(7) A clerk of superior court chosen by the Association of Clerks of Superior Court of North Carolina;
(8) A magistrate appointed by the North Carolina Magistrates' Association;
(9) An attorney appointed by the Council of the State Bar;
(10) One attorney and one nonattorney appointed by the Chief Justice;
(11) One nonattorney and one attorney appointed by the Governor;
(12) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(13) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

(1) One year. -- The district court judge, the attorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the attorney appointed upon the recommendation of the Speaker of the House of Representatives.
(2) Two years. -- The district attorney, the magistrate, the nonattorney appointed by the Governor, and the nonattorney appointed by the Chief Justice.
(3) Three years. -- The public defender, the attorney appointed by the State Bar Council, the nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.
(4) Four years. -- The superior court judge, the clerk of superior court, the attorney appointed by the Governor, and the attorney appointed by the Chief Justice.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the

Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent member of the General Assembly or any incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group.

"§ 7A-49.5. Duties of the State Judicial Council.

(a) The State Judicial Council shall:

(1) Study the judicial system and report periodically to the Chief Justice on its findings, particularly in light of the observations and recommendations of the Commission for the Future of Justice and the Courts in North Carolina;

(2) Advise the Chief Justice on priorities for funding;

(3) Review and advise the Chief Justice on the budget prepared by the Director of the Administrative Office of the Courts for submission to the General Assembly;

(4) Study and recommend to the General Assembly the salaries of justices and judges;

(5) Recommend to the General Assembly changes in the expense allowances, benefits, and other compensation for judicial officials;

(6) If a judgeship becomes vacant, review whether the judgeship is still needed for that district and, if it is not, recommend to the Chief Justice whether the judgeship should be transferred to another district or should be abolished; and

(7) Advise or assist the Chief Justice, as requested, on any other matter concerning the operation of the courts.

(b) The State Judicial Council, with the assistance of the Director of the Administrative Office of the Courts, shall recommend to the Chief Justice performance standards for all courts and all judicial officials and shall recommend procedures for periodic evaluation of the court system and individual

judicial officials and employees. If these standards are implemented by the Chief Justice, the Director of the Administrative Office of the Courts shall inform each judicial official of the standards being used to evaluate that official's performance. If implemented, the evaluation of each judge shall include assessments from other judges, litigants, jurors, and attorneys, as well as a self-evaluation by the judge. Summaries of the evaluations of justices and judges shall be made available to the public, in a manner to be determined by the Council, but the data collected in producing the evaluations shall not be a public record.

(c) The State Judicial Council shall monitor caseloads in the appellate courts to determine whether cases are being handled expeditiously, whether those courts have adequate resources, and whether the courts are able to maintain a proper balance between criminal and civil matters. If needed to assure such a balance, the Council may recommend the establishment of separate divisions of the Court of Appeals for criminal and civil cases and establish procedures for the regular rotation of individual judges between those divisions.

(d) The State Judicial Council shall study and recommend guidelines for the assignment and management of cases, including the identification of different kinds of cases for different kinds of resolution. If the Chief Justice decides to implement these guidelines, they may provide that, except for good cause, each civil case subject to assignment to a trial judge should be directed first to an appropriate form of alternative dispute resolution. The guidelines may also provide for posttrial alternative dispute resolution before or as part of an appeal. The guidelines should not require absolute uniformity from district to district and should allow case management personnel within each circuit the flexibility to direct cases to the most appropriate means of resolution in that district.

(e) The State Judicial Council shall monitor the use of alternative dispute resolution throughout the court system and, with the assistance of the Director of the Administrative Office of the Courts and the Dispute Resolution Commission, evaluate the effectiveness of those programs.

(f) The State Judicial Council may recommend to the Chief Justice changes in the boundaries of the judicial districts or divisions.

(g) The State Judicial Council shall perform other functions as needed to monitor the administration of justice and assess the effectiveness of the Judicial Branch in serving the public and to

advise the Chief Justice and the General Assembly on changes needed to assist the General Court of Justice in better fulfilling its mission.

"**§ 7A-49.6. Compensation of the State Judicial Council.**

Members of the State Judicial Council who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the State Judicial Council who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6."

Section 2. There is appropriated from the General Fund to the Judicial Department the sum of twenty-five thousand dollars ($25,000) for the 1999-2000 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2000-2001 fiscal year to reimburse members of the State Judicial Council for subsistence and travel expenses as provided in G.S. 7A-49.6.

Section 3. This act becomes effective January 1, 2000.

STATE JUDICIAL COUNCIL/FUNDS: House Bill 1222

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Rep. Baddour
		Summary by:	Tim Hovis Committee Counsel
Date:	May 19, 1999		
Version:	Proposed Committee Substitute		

SUMMARY: House Bill 1222 creates the State Judicial Council to be composed of representatives of the courts, attorneys, and the public to advise the Chief Justice on funding priorities, judicial salaries, the transfer of judgeships upon vacancy, and matters concerning the operation of the courts.

Membership on the Council consists of the Chief Justice, the Chief Judge of the Court of Appeals, a district attorney, a public defender, a superior court judge, a district court judge, a clerk of superior court, a magistrate, and an attorney appointed by the State Bar. Also, the Governor, Chief Justice, General Assembly (upon the Speaker's recommendation), and the General Assembly (upon the President Pro Tempore's recommendation) each appoint one attorney and one nonattorney member to the Council.

Other specific duties of the Council include the following:

- *Recommend performance standards for the courts and judicial officials*
- *Monitor appellate court caseloads to determine the adequacy of resources and the balance of civil and criminal matters in the appellate courts*
- *Recommend guidelines for case management including pretrial and posttrial alternative dispute resolution*
- *Monitor and evaluate the use of alternative dispute resolution*
- *Recommend changes in district or division boundaries*
- *Other functions as needed to monitor the administration of justice and judicial effectiveness in serving the public*

Members of the Council receive compensation and reimbursement for travel and subsistence expenses as currently provided for officers or employees of the State in G.S. 138-6 or members of the public in G.S. 138-5, as applicable.

House Bill 1222 appropriates $25,000 for the 1999-200 fiscal year and $50,000 for the 2000-2001 fiscal year to the Judicial Department to reimburse Council members for subsistence and travel expenses.

The bill becomes effective January 1, 2000.

VISITOR REGISTRATION SHEET

Judiciary IV — 5-20-99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Don Beason	The Capitol
Chief Justice Mitchell	Supreme Court
Bill Scoggin	NC Bar Assoc.
Jeanne Bonds	AOC
Michael Crowell	Courts Futures Comm'n
Jim Drennan	Institute of Government
Lucius Pullen	Attorney
Ashley Coad	Rep. Baddour's Office
Roy Doue	Corr. & DAs

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

May 25, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, May 25, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Earle, Jeffus, Justus, McMahan, Pope, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

HB 1222 State Judicial Council/Funds. Rep. Baddour, bill sponsor, asked Rep. Thomas to take the chair while the debate on the bill continued. Rep. Bowie moved that the revised committee substitute be adopted for purposes of discussion. Motion passed. Rep. Baddour explained that the revised committee substitute contains stylistic and substantive changes. Rep. Bowie moved for a favorable report as to committee substitute unfavorable as to original bill, and recommendation that the bill be re-referred to the Committee on Appropriations. Motion carried.

The meeting adjourned at 10:25 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 5/26

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
H.B. 1222 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE STATE COURT SYSTEM BY CREATING A STATE JUDICIAL COUNCIL AND TO APPROPRIATE FUNDS FOR THE EXPENSES OF THE JUDICIAL COUNCIL.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill unfavorable as to original bill and recommendation that the committee substitute bill be re-referred to the Committee on Appropriations.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1222*
Proposed Committee Substitute H1222-PCSRG-002
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Judicial Council/Funds. (Public)

Sponsors:

Referred to: Judiciary IV, if favorable, Appropriations.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE COURT SYSTEM BY CREATING A STATE JUDICIAL COUNCIL AND TO APPROPRIATE FUNDS FOR THE EXPENSES OF THE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"State Judicial Council.

"§ 7A-49.4. Composition of State Judicial Council.

(a) The State Judicial Council shall consist of 17 members as follows:

(1) The Chief Justice, who chairs the Council;

(2) The Chief Judge of the Court of Appeals;

(3) A district attorney chosen by the Conference of District Attorneys;

(4) A public defender chosen by the public defenders;

(5) A superior court judge chosen by the Conference of Superior Court Judges;

(6) A district court judge chosen by the Conference of District Court Judges;

(7) A clerk of superior court chosen by the Association of Clerks of Superior Court of North Carolina;
(8) A magistrate appointed by the North Carolina Magistrates' Association;
(9) An attorney appointed by the Council of the State Bar;
(10) One attorney and one nonattorney appointed by the Chief Justice;
(11) One nonattorney and one attorney appointed by the Governor;
(12) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(13) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

(1) One year. -- The district court judge, the attorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the attorney appointed upon the recommendation of the Speaker of the House of Representatives.
(2) Two years. -- The district attorney, the magistrate, the nonattorney appointed by the Governor, and the nonattorney appointed by the Chief Justice.
(3) Three years. -- The public defender, the attorney appointed by the State Bar Council, the nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.
(4) Four years. -- The superior court judge, the clerk of superior court, the attorney appointed by the Governor, and the attorney appointed by the Chief Justice.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the

Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group.

"**§ 7A-49.5. Duties of the State Judicial Council.**

(a) The State Judicial Council shall:

(1) Study the judicial system and report periodically to the Chief Justice on its findings;

(2) Advise the Chief Justice on priorities for funding;

(3) Review and advise the Chief Justice on the budget prepared by the Director of the Administrative Office of the Courts for submission to the General Assembly;

(4) Study and recommend to the General Assembly the salaries of justices and judges;

(5) Recommend to the General Assembly changes in the expense allowances, benefits, and other compensation for judicial officials;

(6) Recommend the creation of judgeships; and

(7) Advise or assist the Chief Justice, as requested, on any other matter concerning the operation of the courts.

(b) The State Judicial Council, with the assistance of the Director of the Administrative Office of the Courts, shall recommend to the Chief Justice performance standards for all courts and all judicial officials and shall recommend procedures for periodic evaluation of the court system and individual judicial officials and employees. If these standards are implemented by the Chief Justice, the Director of the Administrative Office of the Courts shall inform each judicial official of the standards being used to evaluate that official's performance. If implemented, the evaluation of each judge shall include assessments from other judges, litigants, jurors, and attorneys, as well as a self-evaluation by the judge. Summaries of the evaluations of justices and judges shall be made available

to the public, in a manner to be determined by the Council, but the data collected in producing the evaluations shall not be a public record.

(c) The State Judicial Council shall study and recommend guidelines for the assignment and management of cases, including the identification of different kinds of cases for different kinds of resolution. If the Chief Justice decides to implement these guidelines, they may provide that, except for good cause, each civil case subject to assignment to a trial judge should be directed first to an appropriate form of alternative dispute resolution. The guidelines may also provide for posttrial alternative dispute resolution before or as part of an appeal. The guidelines should not require absolute uniformity from district to district and should allow case management personnel within each district the flexibility to direct cases to the most appropriate means of resolution in that district.

(d) The State Judicial Council shall monitor the use of alternative dispute resolution throughout the court system and, with the assistance of the Director of the Administrative Office of the Courts and the Dispute Resolution Commission, evaluate the effectiveness of those programs.

(e) The State Judicial Council may recommend changes in the boundaries of the judicial districts or divisions.

(f) The State Judicial Council shall perform other functions as needed to monitor the administration of justice and assess the effectiveness of the Judicial Branch in serving the public and to advise the Chief Justice and the General Assembly on changes needed to assist the General Court of Justice in better fulfilling its mission.

"**§ 7A-49.6. Compensation of the State Judicial Council.**

Members of the State Judicial Council who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the State Judicial Council who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6. Members of the State Judicial Council who are legislators shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1."

Section 2. There is appropriated from the General Fund to the Judicial Department the sum of twenty-five thousand dollars ($25,000) for the 1999-2000 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2000-2001 fiscal year to

reimburse members of the State Judicial Council for subsistence and travel expenses as provided in G.S. 7A-49.6.

Section 3. This act becomes effective January 1, 2000.

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

May 25, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
MICHAEL CROWELL	ATTY, RALEIGH
BILL ECOGGIN	NC BAR ASSOC
Ray Dorn	Conference of D.A.s
Lucius PULLEN	ATTORNEY
Ray Dorn	Conference of DAs
Burley Mitchell	Chief Justice
Jeanne Bonds	AOC
John Bason + crew	UNC-TV
Elaina Blanks	Intern - IOG
Michael Lieberman	Intern - Institute of Government

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 8, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, June 8, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, McMahan, Pope, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

SB 1055 Certain Court Report Services. Sen. Wellons, bill sponsor, was recognized to explain the bill. Rep. Justus moves for adoption of the proposed committee substitute for purposes of discussion. Motion passed. Tim Hovis, staff attorney, is recognized to explain the proposed committee substitute. A summary is attached for the record. Kay McGovern, President of the North Carolina Verbatim Reporters Association, and Nancy Braswell, President of the North Carolina Court Reporters Association, spoke in favor of the bill. As did representatives of Nationwide Insurance, Susan Valuri, and representatives of Amerinet, Marvin Musselwhite. After numerous questions were raised by the committee, the bill was temporarily displaced. No vote was taken.

SB 800 En Banc Procedure. Sen. Rand, bill sponsor, was recognized to explain the bill. After a brief discussion by the committee, Rep. Haire moved for a favorable report. Motion carried.

The meeting adjourned at 10:40 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1055
Judiciary I Committee Substitute Adopted 4/28/99

Short Title: Certain Court Report Services. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF A COURT REPORTING SERVICE THAT HAS AN INTEREST WHEN A DEPOSITION IS TAKEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 28(c) reads as rewritten:

"(c) Disqualification for interest. -- No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action unless the parties agree otherwise by stipulation as provided in Rule 29. Further, no court reporting service shall take a deposition when the contract for the court reporting service is between a person authorized to take a deposition or any person with whom that authorized person has a principal and agency relationship, and any attorney, party to an action, or party having a financial interest in an action. This subsection does not apply to a contract for services to a governmental body. This subsection does not apply when the contract relates to a particular action pending before a court or administrative agency."

Section 2. This act becomes effective October 1, 1999, and applies to depositions taken on or after October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1055-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1055
THIS IS A DRAFT 8-JUN-99 09:18:54
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Certain Court Report Services. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF A COURT REPORTING SERVICE THAT HAS AN INTEREST WHEN A DEPOSITION IS TAKEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 28(c) reads as rewritten:

"(c) Disqualification for interest. -- Unless the parties agree otherwise by stipulation as provided in Rule 29, no ~~No~~ deposition shall be taken before a person who is ~~a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action unless the parties agree otherwise by stipulation as provided in Rule 29.~~ any of the following:

(1) A relative, employee or attorney of any of the parties;

(2) A relative or employee of an attorney of the parties;

(3) Financially interested in the action; or

(4) An independent contractor if the contractor or the contractor's principal is under a blanket contract for the court

reporting services with an attorney of the parties, party to the action, or party having a financial interest in the action. The party desiring to take the deposition under a stipulation shall disclose the disqualification in writing in a Rule 30(b) notice of deposition and shall inform all parties to the litigation on the record of the existence of the disqualification under this rule and of the proposed stipulation waiving the disqualification.

For the purposes of this rule, a blanket contract means a contract to perform court reporting services over a fixed period of time or an indefinite period of time, rather than on a case by case basis, or any other contractual arrangement which compels, guarantees, regulates or controls the use of particular court reporting services in future cases.

Notwithstanding any other provision of law, a person is prohibited from taking a deposition under any contractual agreement that requires transmission of the original transcript without the transcript having been certified as provided in Rule 30(f) by the person before whom the deposition was taken."

Section 2. This act becomes effective October 1, 1999, and applies to depositions taken on or after October 1, 1999.

SENATE BILL 1055:
Certain Court Report Services

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Senator Wellons
Date:	May 17, 1999	**Summary by:**	Tim Hovis Committee Counsel
Version:	Second Edition		

SUMMARY: ***Senate Bill 1055 would expand Rule 28 of the Rules of Civil Procedure to disqualify court reporters from taking a deposition when that court reporter has a contract, or the court reporter's principal has a contract, for court reporting services with an attorney of any of the parties, a party to the action, or a party having a financial interest in the action.***

CURRENT LAW: Rule 28 of the Rules of Civil Procedure provides who may and may not take depositions in civil cases. The rule disqualifies from taking a deposition the following individuals: (1) relatives, employees, and attorneys of the parties; (2) relatives and employees of the attorneys; and (3) persons with a financial interest in the action.

BILL ANALYSIS: Senate Bill 1055 would expand Rule 28 to disqualify from taking a deposition court reporters who have a contract, or whose principal has a contract, for court reporting services with an attorney of any of the parties, a party to the action, or a party having a financial interest in the action.

The exclusion does not apply to a contract for services to a governmental body or when the contract relates to a particular action pending before a court.

Rule 28. Persons before whom depositions may be taken.

(a) *Within the United States.* - Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before a person authorized to administer oaths by the laws of this State, of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) *In foreign countries.* - Depositions may be taken in a foreign country:

(1) Pursuant to any applicable treaty or convention;

(2) Pursuant to a letter of request, whether or not captioned a letter rogatory;

(3) On notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States; or

(4) Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in (here name the country)." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because the testimony was not taken under oath, or any similar departure from the requirements for depositions taken within the United States under these rules.

(c) *Disqualification for interest.* - No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action unless the parties agree otherwise by stipulation as provided in Rule 29.

(d) *Depositions to be used outside this State.* -

(1) A person desiring to take depositions in this State to be used in proceedings pending in the courts of any other state or country may present to a judge of the superior or district court a commission, order, notice, consent, or other authority under which the deposition is to be taken, whereupon it shall be the duty of the judge to issue the necessary subpoenas pursuant to Rule 45. Orders of the character provided in Rules 30(b), 30(d), and 45(b) may be made upon proper application therefor by the person to whom such subpoena is directed. Failure by any person without adequate excuse to obey a subpoena served upon him pursuant to this rule may be

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deemed a contempt of the court from which the subpoena issued.

(2) The commissioner herein provided for shall not proceed to act under and by virtue of his appointment until the party seeking to obtain such deposition has deposited with him a sufficient sum of money to cover all costs and charges incident to the taking of the deposition, including such witness fees as are allowed to witnesses in this State for attendance upon the superior court. From such deposit the commissioner shall retain whatever amount may be due him for services, pay the witness fees and other costs that may have been incurred by reason of taking such deposition, and if any balance remains in his hands, he shall pay the same to the party by whom it was advanced.

(1967, c. 954, s. 1; 1975, c. 762, s. 2; 1995, c. 389, s. 4.)

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Reported 6/8

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
S.B. 800 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO CONDUCT EN BANC PROCEEDINGS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 800

Short Title: En Banc Procedure. (Public)

Sponsors: Senators Rand; Clodfelter and Cooper.

Referred to: Judiciary I.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO CONDUCT EN BANC PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971.

Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

The Court of Appeals shall sit in panels of three judges ~~each.~~ each, and may also sit en banc upon a vote of a majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in § 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

Section 2. The Supreme Court, in consultation with the Court of Appeals, is respectfully requested to adopt rules of procedure for en banc proceedings in the Court of Appeals.

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

SENATE BILL 800:
En Banc Procedure

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Senator Rand
		Summary by:	Tim Hovis Committee Counsel
Date:	June 8, 1999		
Version:	First Edition		

SUMMARY: ***Senate Bill 800 would permit the Court of Appeals to sit "en banc" or as a whole, to hear appeals and requests the Supreme Court to adopt rules of procedures for these types full court hearings.***

CURRENT LAW: The current law provides that the Court of Appeals is to sit in 3-judge panels. There are 12 judges on the Court of Appeals. Section 7 of Article IV of the North Carolina Constitution authorizes the General Assembly to determine how the court is to hear appeals.

BILL ANALYSIS: Section 1 would authorize the Court of Appeals, upon a majority vote of the judges of the court, to sit as a whole to hear a case on appeal, instead of just a three-judge panel.

Section 2 is requested to adopt rules of procedure for en banc proceedings in the Court of Appeals.

EFFECTIVE DATE: The bill is effective when it becomes law.

This summary was contributed to by Walker Reagan, Research Division.

S800-SMRU-001

VISITOR REGISTRATION SHEET

Judiciary IV Committee — Name of Committee

6/8/99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Janet Wertheim Smith	AOC
Pamela Best	AOC
Darlene Bryant	Bryant Court Reporting
Joyce Brasfield	Official Court Reporter - Goldsboro, NC
Heidi Gregory	PEFormII
[illegible]	NCVRA
Bettie Pace Thorne	NCVRA
Kay McGovern	NCVRA, President, Raleigh
Fred HARVey	NVRA, President, Raleigh
Susan Valaani	Nationwide
Laura Hartsell	NC Bar Association
[illegible]	Peggy Goodwin
Alan Mills	Bill Bowen
Henry M Lancaster III	NCLM
Charles Cramer	NCATL

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 10, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, June 10, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, McMahan, Pope, and Saunders. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

SB 1055 Certain Court Report Services. Rep. Bowie moved to adopt the proposed committee substitute for purposes of discussion. Motion carried. Ann Winner representative of the North Carolina Verbatim Reporters Association described the changes that were made since the previous meeting. Rep. Pope voiced his opposition to the bill, and said that he did not feel that the legislation was needed. Rep. Phil Haire chaired the meeting while Rep. Baddour commented on the bill in the absence of Sen. Wellons. He noted that the bill was a reasonable and modest extension of the current law. Rep. Justus moved for a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill. Motion passed.

SB 526 Modification & Termination of Irrevocable Trusts. Sen. Hagan, bill sponsor, was recognized to explain the bill. Rep Bowie moved for a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill. After a question from Rep. Decker, motion passed.

SB 1005 Year 2000 Liability Limitations. Rep. McMahan explained the bill in the absence of Sen. Hoyle, bill sponsor. Rep. Decker moved for adoption of the proposed committee substitute for purposes of discussion. Motion carried. Rep. Culpepper questioned whether or not consequential damages include actual damages. Alan Miles, representative of the Credit Union, addressed the question. Rep. Decker questioned the definition of an enterprise system. Paul Stock of the North Carolina Bankers Association explained the definition. Rep. Justus and Rep. Bowie voiced their concerns with regard to the issues of due dilligence and reasonable care. Rep. Baddour explained that businesses would be expected to take reasonably prudent action given the circumstance. Leslie Bevacqua spoke on NCCBI's interest in this legislation, and Dick Taylor of the North Carolina Trial Lawyers Association stated that his organization had no opposition to this legislation. No vote was taken.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 6/14

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 1055 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE USE OF A COURT REPORTING SERVICE THAT HAS AN INTEREST WHEN A DEPOSITION IS TAKEN.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ 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

S1055-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1055
THIS IS A DRAFT 9-JUN-99 17:10:40
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Certain Court Report Services. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF A COURT REPORTING SERVICE THAT HAS AN INTEREST WHEN A DEPOSITION IS TAKEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 28(c) reads as rewritten:

"(c) Disqualification for interest. -- Unless the parties agree otherwise by stipulation as provided in Rule 29, no ~~No~~ deposition shall be taken before a person who is ~~a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action unless the parties agree otherwise by stipulation as provided in Rule 29.~~ any of the following:

(1) A relative, employee or attorney of any of the parties;

(2) A relative or employee of an attorney of the parties;

(3) Financially interested in the action; or

(4) An independent contractor if the contractor or the contractor's principal is under a blanket contract for the court

reporting services with an attorney of the parties, party to the action, or party having a financial interest in the action. Notwithstanding the disqualification under this rule, the party desiring to take the deposition under a stipulation shall disclose the disqualification in writing in a Rule 30(b) notice of deposition and shall inform all parties to the litigation on the record of the existence of the disqualification under this rule and of the proposed stipulation waiving the disqualification. Any party opposing the proposed stipulation as provided in the notice of deposition shall give timely written notice of his or her opposition to all parties.

For the purposes of this rule, a blanket contract means a contract to perform court reporting services over a fixed period of time or an indefinite period of time, rather than on a case by case basis, or any other contractual arrangement which compels, guarantees, regulates or controls the use of particular court reporting services in future cases.

Notwithstanding any other provision of law, a person is prohibited from taking a deposition under any contractual agreement that requires transmission of the original transcript without the transcript having been certified as provided in Rule 30(f) by the person before whom the deposition was taken."

Section 2. This act becomes effective October 1, 1999, and applies to depositions taken on or after October 1, 1999.

Reported 6/14

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 526 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ 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 3

SENATE BILL 526
Judiciary II Committee Substitute Adopted 4/15/99
Third Edition Engrossed 4/21/99

Short Title: Mod. & Term. of Irrevocable Trusts. (Public)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 36A of the General Statutes is repealed.

Section 2. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11A.

"Modification and Termination of Trusts.

"**§ 36A-125.1. Definitions.**

As used in this section:

(1) 'Beneficiary' means a person who has a present or future interest, vested or contingent, in a trust, including any such person who is not in esse or cannot be determined until the occurrence of a future event.

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

(3) 'Irrevocable trust' means an express noncharitable irrevocable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes.

(4) 'Sole beneficiary' means a beneficiary of a trust for which the settlor does not manifest an intention to give a beneficial interest to anyone else.

(5) 'Sui juris' means a person who is in esse and not a minor or otherwise legally incapacitated. With regard to a beneficiary, 'sui juris' also means that such beneficiary is ascertained and that the trustee knows the identity of the beneficiary.

(6) 'Trustee' means the trustee or trustees acting under an irrevocable trust.

"§ 36A-125.2. Modification or termination where settlor is sole beneficiary.

If a settlor is sui juris and the sole beneficiary of an irrevocable trust, the settlor may compel the modification or termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

"§ 36A-125.3. Modification or termination by consent of settlor and beneficiaries.

(a) If the settlor and all beneficiaries of an irrevocable trust are sui juris and consent, they may compel the modification or termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

(b) If any beneficiary does not consent to the modification or termination of the trust or is not sui juris, the other beneficiaries may institute a proceeding before the superior court to compel a modification or partial termination of the trust. The court may, with the consent of the settlor, allow such a modification or partial termination upon a finding that such action would not substantially impair the interests of the beneficiaries who do not consent or who are not sui juris.

"§ 36A-125.4. Modification or termination by consent of beneficiaries.

(a) Except as provided in subsection (b) of this section, if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust in a proceeding before the superior court.

(b) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust or modify it in a manner that affects its continuance according to its terms, and if the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court in its discretion determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

"§ 36A-125.5. Provisions relating to consent of beneficiaries.

For purposes of this Article:

(1) The consent of a beneficiary who is not sui juris may be given in proceedings before the court by a guardian ad litem appointed for that beneficiary if the guardian ad litem finds that it would be appropriate to do so. The guardian ad litem may base a decision to consent to modification or termination of a trust upon a finding

that living members of the beneficiary's family would generally benefit from such action.

(2) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust, the presumption of fertility is rebuttable.

(3) If the trust provides for the disposition of property to a class of persons described only as 'heirs' or 'next of kin' of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

"§ 36A-125.6. Modification or termination of a small trust.

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust if the court determines that the fair market value of the assets held in trust is so low that the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) Notwithstanding the provisions of subsection (a) of this section, if at any time the trustee of an irrevocable trust determines in good faith that the fair market value of the assets held in trust is fifty thousand dollars ($50,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may in its discretion terminate the trust and distribute the trust property, including principal and undistributed income, to any one or more of the beneficiaries to whom the income could be paid, or if there is no beneficiary to whom the income could be paid, to any one or more of the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust instrument. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust.

The trustee shall not be liable for such termination and distribution, notwithstanding the existence or potential existence of other beneficiaries who are not sui juris. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

The provisions of this subsection shall not apply where the instrument creating the trust, by specific reference to this section, or to former G.S. 36A-125, provides that it shall not apply.

"§ 36A-125.7. Modification or termination because of changed circumstances.

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust:

(1) If the purpose of the trust has been fulfilled or has become illegal or impossible of fulfillment; or

(2) If, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) In exercising its discretion under subsection (a) of this section, the court may order the trustee to do acts that are not authorized or are prohibited by the trust instrument if necessary to carry out the purposes of the trust.

"§ 36A-125.8. Inalienability of the beneficiary's interest.

The court, in exercising its discretion to modify or terminate an irrevocable trust pursuant to the provisions of G.S. 36A-125.4, 36A-125.6(a), and 36A-125.7, and the trustee, in exercising its discretion to terminate a trust pursuant to G.S. 36A-125.6(b), shall consider provisions making the interest of a beneficiary inalienable, including those described in G.S. 36A-115(b), but the court or trustee is not precluded from the exercise of that discretion solely because of such provisions.

"§ 36A-125.9. Tax Consequences.

The court in exercising its discretion to modify or terminate an irrevocable trust under the provisions of this Article, and the trustee, in exercising its discretion to terminate a trust pursuant to G.S. 36A-125.6(b), shall consider the tax consequences of such modification or termination, if any, to the trust and the beneficiaries of the trust.

"§ 36A-125.10. Distribution to minors or incompetents.

If any trust property becomes distributable to a minor or incompetent under this Article it may be distributed:

(1) To the guardian of the estate or general guardian of such beneficiary;

(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or

(3) In accordance with the North Carolina Custodial Trust Act, Chapter 33B of the General Statutes.

"§ 36A-125.11. Procedure.

A proceeding under this Article may be brought under the Uniform Declaratory Judgment Act, Article 26 of Chapter 1 of the General Statutes, the provisions of which shall apply to that proceeding to the extent not inconsistent with this Article.

"§ 36A-125.12. Exclusiveness of remedy.

This Article does not include or abridge any other rights or proceedings existing under any other statute or otherwise provided by law to modify, terminate, reform, or rescind an irrevocable trust."

Section 3. This act becomes effective January 1, 2000, and applies to all trusts created before or after that date, except that G.S. 36A-125.6(b) shall not apply to trusts created before October 1, 1991, if the trust instrument contains spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 526
Judiciary II Committee Substitute Adopted 4/15/99
Third Edition Engrossed 4/21/99
Proposed House Committee Substitute: S526-PCSSK-001
Attention: line numbers may change after adoption.

Short Title: Mod. & Term. of Irrevocable Trusts. (Public)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 36A of the General Statutes is repealed.

Section 2. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11A.

"Modification and Termination of Irrevocable Trusts.

"**§ 36A-125.1. Definitions.**

As used in this section:

(1) 'Beneficiary' means a person who has a present or future interest, vested or contingent, in a trust, including any such person who is not in esse or cannot be determined until the occurrence of a future event.

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

(3) 'Trust' means an express noncharitable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes. The term 'trust' does not include constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57 and 54B-130, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(4) 'Sole beneficiary' means a beneficiary of a trust for which the settlor does not manifest an intention to give a beneficial interest to anyone else.

(5) 'Sui juris' means a person who is in esse and not a minor or otherwise legally incapacitated. With regard to a beneficiary, 'sui juris' also means that such beneficiary is ascertained and that the trustee knows the identity of the beneficiary.

(6) 'Trustee' means the trustee or trustees acting under an irrevocable trust.

"§ 36A-125.2. Modification or termination where settlor is sole beneficiary.

If a settlor is sui juris and the sole beneficiary of an irrevocable trust, the settlor may compel the modification or termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

"§ 36A-125.3. Modification or termination by consent of settlor and beneficiaries.

(a) If the settlor and all beneficiaries of an irrevocable trust are sui juris and consent, they may compel the modification or termination of the trust without the approval of the court

even though the purposes for which the trust was created have not been accomplished.

(b) If any beneficiary does not consent to the modification or termination of the trust or is not sui juris, the other beneficiaries may institute a proceeding before the superior court to compel a modification or partial termination of the trust. The court may, with the consent of the settlor, allow such a modification or partial termination upon a finding that such action would not substantially impair the interests of the beneficiaries who do not consent or who are not sui juris.

"**§ 36A-125.4. Modification or termination by consent of beneficiaries.**

(a) Except as provided in subsection (b) of this section, if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust in a proceeding before the superior court.

(b) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust or modify it in a manner that affects its continuance according to its terms, and if the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court in its discretion determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

"**§ 36A-125.5. Provisions relating to consent of beneficiaries.**

For purposes of this Article:

(1) The consent of a beneficiary who is not sui juris may be given in proceedings before the court by a guardian ad litem appointed for that beneficiary if the guardian ad litem finds that it would be appropriate to do so. The guardian ad litem may base a decision to consent to modification or termination of a trust upon a finding that living members of the beneficiary's family would generally benefit from such action.

(2) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust, the presumption of fertility is rebuttable.

(3) If the trust provides for the disposition of property to a class of persons described only as 'heirs' or 'next of kin' of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the

court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

"§ 36A-125.6. Modification or termination of a small trust.

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust if the court determines that the fair market value of the assets held in trust is so low that the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) Notwithstanding the provisions of subsection (a) of this section, if at any time the trustee of an irrevocable trust determines in good faith that the fair market value of the assets held in trust is fifty thousand dollars ($50,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may in its discretion terminate the trust and distribute the trust property. The trust property, including principal and undistributed income, shall be paid, in a manner that conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust instrument, to any one or more of the beneficiaries to whom the income could be paid, or if there is no beneficiary to whom the income could be paid, to any one or more of the beneficiaries. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust. The provisions of this subsection shall not apply where the instrument creating the trust, by specific reference to this section, or to former G.S. 36A-125, provides that it shall not apply.

(c) The trustee shall not be liable for such termination and distribution, notwithstanding the existence or potential existence of other beneficiaries who are not sui juris. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

"§ 36A-125.7. Modification or termination because of changed circumstances.

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust:

(1) If the purpose of the trust has been fulfilled or has become illegal or impossible of fulfillment; or

(2) If, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) In exercising its discretion under subsection (a) of this section, the court may order the trustee to do acts that are not authorized or are prohibited by the trust instrument if necessary to carry out the purposes of the trust.

"**§ 36A-125.8. Inalienability of the beneficiary's interest.**

The court, in exercising its discretion to modify or terminate an irrevocable trust pursuant to the provisions of G.S. 36A-125.4, 36A-125.6(a), and 36A-125.7, and the trustee, in exercising its discretion to terminate a trust pursuant to G.S. 36A-125.6(b), shall consider provisions making the interest of a beneficiary inalienable, including those described in G.S. 36A-115(b), but the court or trustee is not precluded from the exercise of that discretion solely because of such provisions.

"**§ 36A-125.9. Tax Consequences.**

The court in exercising its discretion to modify or terminate an irrevocable trust under the provisions of this Article, and the trustee, in exercising its discretion to terminate a trust pursuant to G.S. 36A-125.6(b), shall consider the tax consequences of such modification or termination, if any, to the trust and the beneficiaries of the trust.

"**§ 36A-125.10. Distribution to minors or incompetents.**

If any trust property becomes distributable to a minor or incompetent under this Article it may be distributed:

(1) To the guardian of the estate or general guardian of such beneficiary;

(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or

(3) In accordance with the North Carolina Custodial Trust Act, Chapter 33B of the General Statutes.

"**§ 36A-125.11. Procedure.**

A proceeding under this Article may be brought under the Uniform Declaratory Judgment Act, Article 26 of Chapter 1 of the General Statutes, the provisions of which shall apply to that proceeding to the extent not inconsistent with this Article.

"**§ 36A-125.12. Exclusiveness of remedy.**

This Article does not include or abridge any other rights or proceedings existing under any other statute or otherwise provided by law to modify, terminate, reform, or rescind an irrevocable trust."

Section 3. This act becomes effective January 1, 2000, and applies to all trusts created before or after that date, except that G.S. 36A-125.6(b) shall not apply to trusts created before October 1, 1991, if the trust instrument contains spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3).

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

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Senate Bill 526 - Modification and Termination of Certain Irevocable Trusts

In North Carolina common law rules govern the means by which a non-charitable irrevocable trust may be modified or terminated, with the exception of G.S. §36A-125 allowing a trustee to terminate a small trust of $10,000 or less. North Carolina courts have recognized general common law rules to the effect that a trust may be modified or terminated (i) by the settlor if sole beneficiary, (ii) by consent of the settlor and the beneficiaries, and, under certain circumstances, (iii) by the consent of the beneficiaries alone or (iv) by court order.

However, because our courts have not rules on a number of specific issues, uncertainties exist as to whether a trust can be validly modified or terminated. For example, our courts have not decided whether to follow the "English rule" allowing a termination by consent of the beneficiaries in any event or the "American rule" allowing such a termination only if continuance of the trust is not necessary to carry out a material purpose. Moreover, it is not clear whether and under what circumstances a guardian ad litem may consent to a termination of behalf of minors or unborns. In some situations the common law rules have proved to be too inflexible in reaching an equitable result.

The Estate Planning and Fiduciary Law Section of the North Carolina Bar Association recommends the enactment of the proposed statute to restate and clarify the common law rules and to allow more flexibility in modifying and terminating irrevocable trusts. For example, the proposed statute adopts the "American rule" noted above but gives the court discretion in applying the material purpose doctrine. The proposed statute also provides that a guardian ad litem may consent to a modification or termination of a trust and rely on benefits accruing to family members in doing so.

In providing for the modification and termination of irrevocable trusts in general, the proposed statute rewrites G.S. §36A-125. It includes the current provisions of G.S. §36A-125 allowing a trustee to terminate an uneconomically low trust but increases the threshold amount from $10,000 to $50,000.

The Bar Association believes that the proposed statute would eliminate uncertainties that currently exist in this area and provide the means to modify or terminate an irrevocable trust in appropriate circumstances without unnecessarily defeating the purpose of the settlor or testator in establishing the trust.

The Bar Association recommends passage of this important legislation.

WILLIAM G. SCOGGIN, DIRECTOR OF GOVERNMENTAL AFFAIRS
BSCOGGIN@MAIL.BARLINC.ORG • 919.677.0561 EXTENSION 340

SENATE BILL 526:
Modification and Termination of Irrevocable Trusts

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Senator Hagan
Date:	June 10, 1999	**Summary by:**	Brenda Carter
Version:	Third Edition		Esther Manheimer
	(S526-PCSSK-001)		Committee Counsel

SUMMARY: Senate Bill 526 makes changes to the law regarding the modification and termination of irrevocable trusts.

CURRENT LAW: Currently, G.S. 36A-125 provides that if at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the trust is $10,000 or less, and the continuance of the trust in relation to the cost of administration would defeat or impair the purpose of the trust, the trustee may terminate the trust and distribute the trust property to the beneficiaries.

BILL ANALYSIS: Senate Bill 526 repeals the current provisions and ***provides for modification or termination of a noncharitable irrevocable trust in the following instances***:

- ***Where the settler is not legally incapacitated and is the sole beneficiary of an irrevocable trust*** – the settlor may compel modification and termination without approval of the court regardless of whether the purpose of the trust has been accomplished.
- ***Where neither the settlor nor any of the beneficiaries is legally incapacitated*** – they may compel modification or termination without approval of the court regardless of whether the purpose of trust has been accomplished; if any beneficiary fails to consent, other beneficiaries may institute a proceeding to compel.
- ***Where all beneficiaries consent*** – they may compel modification and termination in a proceeding in superior court. If continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified unless the court determines that the reasons for modification or termination outweigh the interest in accomplishing the material purpose of the trust.
- ***In the case of a small trust*** – In a proceeding in superior court, the court may modify or terminate upon determination that the fair market value of the trust assets is so low that continuance would defeat or impair trust purposes. If the trustee determines that the fair market value of the trust is $50,000 or less (up from current $10,000) and continuance of the trust in relation to the cost of administration would defeat or impair the purpose of the trust, the trustee may terminate the trust and distribute the trust property to the beneficiaries.
- ***In the case of changed circumstances*** – In a proceeding in superior court, the court may modify or terminate a trust if the trust has been fulfilled or has become illegal or impossible to fulfill, or due to circumstances not known to the settlor and not anticipated by the settlor, continuation of the trust under its terms would defeat or impair trust purposes.

The bill provides that the consent of a beneficiary who is under a legal incapacity may be given by a guardian ad litem. It provides for distribution of trust property to minors or incompetents by way of the guardian of the estate or general guardian of the beneficiary or in accordance with the N.C. Uniform Transfer to Minors Act or the N.C. Custodial Trust Act.

Proceedings under the new Modification and Termination of Trust provisions may be brought under the Uniform Declaratory Judgment Act.

The act becomes effective January 1, 2000, and applies to all trusts created before or after that date. As is now the case, provisions regarding modification and termination of small trusts shall not apply to certain trusts created before October.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1005
Judiciary I Committee Substitute Adopted 4/28/99

Short Title: Year 2000 Liability Limitations. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR 2000 PROBLEMS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Year 2000 Liability and Damages.

"§ 66-280. Purpose.

The General Assembly finds that maintaining the health and stability of the various business enterprises located in the State is in the public interest in order to ensure the uninterrupted delivery of goods and services to the State's citizenry. The General Assembly further finds that the Year 2000 problem is a one-time occurrence for which no one person is accountable and, therefore, the business enterprises of the State should not have their ability to continue to deliver goods and services impaired by having to contest lawsuits arising from Year 2000 problems over which such business enterprises and governmental units have no control. This Article is intended to place prudent limitations on the potential liability of the State's business enterprises, while preserving the appropriate right of recovery by persons suffering losses. This Article does not limit enforcement of laws, regulations, or permits by State or local government bodies or agencies.

"§ 66-281. Definitions.

As used in this Article:

(1) 'Person' means any individual, corporation, partnership, association, company, business trust, joint venture, or other legal entity.

(2) 'Performed with due diligence' means made a good faith effort in its operations to prevent the occurrence of a Year 2000 problem.

(3) 'Regulated entity' means any insured financial institution or public utility.

(4) 'Third party' means, with respect to a person against whom a claim for damages is made based upon a Year 2000 problem, any of the following:

a. A person having no contractual or affiliate relationship with the person against whom a claim for damages is made based upon a Year 2000 problem.

b. A local, State, or federal governmental or quasi-governmental agency or entity.

c. A regulated entity.

(5) 'Year 2000 problem' means any computing, physical, enterprise, or distribution system complication that has occurred or may occur as a result of the change of the year from 1999 to 2000 in any person's technology system, including computer hardware, programs, software, or systems; embedded chip calculations or embedded systems; firmware; microprocessors; or management systems, business processes, or computing applications that govern, utilize, drive, or depend on the Year 2000 processing capability of the person's technology systems. 'Year 2000 problem' includes the common computer programming practice of using a two-digit field to represent a year, resulting in erroneous date calculations; an ambiguous interpretation of the term or field '00'; the failure to recognize 2000 as a leap year; algorithms that use '99' or '00' to activate another function; or the use of any other applications, software, or hardware that are date-sensitive.

(6) 'Year 2000 processing' means the processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving of date or date-sensitive data from, into, or between the twentieth and twenty-first centuries, during the years 1999 and 2000, and leap year calculations.

"§ 66-282. Liability and damages limited.

(a) Subject to subsection (b) of this section, the following apply in any civil action in which the claim for damages is based upon a Year 2000 problem against a person who has performed with due diligence:

(1) No person shall be liable to any person who is (i) not in privity of contract with such person, (ii) not a person to whom an express

warranty has been extended by such person, or (iii) in the case of a trust, not a beneficiary of a trust administered by such person.

(2) No person shall be liable for damages caused by a delay or interruption in performance, or in the delivery of goods or services, resulting from or in connection with (i) a Year 2000 problem to the extent such Year 2000 problem was caused by a third party or (ii) a third party's Year 2000 problem.

(3) No employee, officer, or director shall be liable to any person in his or her capacity as such.

(4) No person shall be liable for consequential or punitive damages.

(5) Total damages shall not exceed actual damages that are the direct result of a Year 2000 problem.

(b) This section does not affect the right of recovery for damages in connection with wrongful death or injuries to person or tangible property.

(c) In determining whether a person performed with due diligence under subsection (a) of this section, it is prima facie evidence of a good faith effort for a regulated entity to comply with the relevant directives of its State or federal regulator."

Section 2. This act is effective when it becomes law and applies to actions with claims for damages commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1005-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1005
THIS IS A DRAFT 9-JUN-99 15:22:14
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Year 2000 Liability Limitations. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR 2000 PROBLEMS.

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The General Assembly finds that maintaining the health and stability of the various business enterprises located in the State is in the public interest in order to ensure the uninterrupted delivery of goods and services to the State's citizenry. The General Assembly further finds that the Year 2000 problem is a one-time occurrence for which no one person is accountable and, therefore, the business enterprises of the State should not have their ability to continue to deliver goods and services impaired by having to contest lawsuits arising from Year 2000 problems over which such business enterprises and

governmental units have no control. This Article is intended to place prudent limitations on the potential liability of the State's business enterprises, while preserving the appropriate right of recovery by persons suffering losses. This Article does not limit enforcement of laws, regulations, or permits by State or local government bodies or agencies.

"**§ 66-281. Definitions.**

As used in this Article:

(1) 'Contractual control' means the right to direct the manner in which a party performs those contractual obligations related to the claim for which damages have been made.

(2) 'Person' means any individual, corporation, partnership, association, company, business trust, joint venture, or other legal entity.

(3) 'Performed with due diligence' means acted with reasonable care in its operations to prevent the occurence of a Year 2000 problem.

(4) 'Regulated entity' means any insured financial institution or public utility.

(5) 'Third party' means, with respect to a person against whom a claim for damages is made based upon a Year 2000 problem, any of the following:

a. A person having no affiliate relationship with and not under the contractual control of the person against whom a claim for damages is made based upon a Year 2000 problem.

b. A local, State, or federal governmental or quasi-governmental agency or entity.

c. A regulated entity.

(6) 'Year 2000 problem' means any computing, physical, enterprise, or distribution system complication that has occurred or may occur as a result of the change of the year from 1999 to 2000 in any person's technology system, including computer hardware, programs, software, or systems; embedded chip calculations or embedded systems; firmware; microprocessors; or management systems, business processes, or computing applications that govern, utilize, drive, or depend on the Year 2000 processing capability of the person's technology systems. 'Year 2000 problem' includes the common computer programming practice of using a two-digit field to represent a year, resulting in erroneous

date calculations; an ambiguous interpretation of the term or field '00'; the failure to recognize 2000 as a leap year; algorithms that use '99' or '00' to activate another function; or the failure of any other applications, software, or hardware due to their date-sensitive nature.

(7) 'Year 2000 processing' means the processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving of date or date-sensitive data from, into, or between the twentieth and twenty-first centuries, during the years 1999 and 2000, and leap year calculations.

"§ 66-282. Liability and damages limited.

(a) Subject to subsection (b) of this section, the following apply in any civil action in which the claim for damages is based upon a Year 2000 problem against a person who has performed with due diligence:

(1) No person shall be liable to any person who is (i) not in privity of contract with such person, (ii) not a person to whom an express warranty has been extended by such person, or (iii) in the case of a trust, not a beneficiary of a trust administered by such person.

(2) No person shall be liable for damages caused by a delay or interruption in performance, or in the delivery of goods or services, resulting from or in connection with (i) a Year 2000 problem to the extent such Year 2000 problem was caused by a third party or (ii) a third party's Year 2000 problem.

(3) No employee, officer, or director shall be liable to any person in his or her capacity as such.

(4) No person shall be liable for consequential or punitive damages.

(5) Total damages shall not exceed actual damages that are the direct result of a Year 2000 problem.

(b) This section does not affect the right of recovery for damages in connection with wrongful death or injuries to person or tangible property.

(c) In determining whether a person performed with due diligence under subsection (a) of this section, it is prima facie evidence of a good faith effort for a regulated entity to comply with the relevant directives of its State or federal regulator.

"§ 66-283. Prelitigation mediation.

(a) Prior to filing a civil action claiming damages allegedly resulting from a Year 2000 problem, the person with the claim shall file a request for mediation with the clerk of court in a county in which the action may be brought. The request shall be in a form prescribed by the Administrative Office of the Courts and shall be served on all necessary parties to the action by certified mail, return receipt requested.

(b) The parties may agree on a mediator within 30 days of the filing of the request. If the parties fail to agree on a mediator within 30 days, any party may apply to the clerk of court where the request was filed for the appointment of a mediator from the list of certified mediators maintained by the Dispute Resolution Commission. The clerk shall make the appointment within 14 days of the application.

(c) The mediated settlement conference shall be conducted within 90 days of the selection or appointment of a mediator. This time limit may be extended by stipulation of the parties or by order of the clerk of court, for not more than a total of 30 days for all extensions, upon a showing of good cause by any of the parties.

(d) Upon conclusion of the mediated settlement conference, the mediator shall file a certificate with the clerk of court, on a form prescribed by the Administrative Office of the Courts, certifying the completion of the conference, the good faith participation in the conference by all necessary parties, and an outline of the terms of any settlement agreement reached. If no settlement was reached, the certificate shall note that the parties failed to reach a settlement at the mediated settlement conference.

(e) In any civil action asserting a claim for damages allegedly resulting from a Year 2000 problem, the court shall dismiss the action without prejudice if within 120 days after the action was filed, any party files a motion to dismiss for failure to comply with this section and thereafter establishes the alleged failure to comply, unless:

(1) The action has been certified as a class action;

(2) The nonmoving party establishes that the moving party was served with a copy of the request for mediation and thereafter declined to participate in a mediated settlement conference; or

(3) The nonmoving party demonstrates, to the satisfaction of the court, good cause for the failure to comply with this section.

(f) The statute of limitations with regard to a claim for damages allegedly arising from a Year 2000 problem shall be tolled from the date a request for mediation is filed until the date the mediator's certificate is filed."

Section 2. This act is effective when it becomes law and applies to actions with claims for damages commenced on or after that date.

SENATE BILL 1005:
Year 2000 Liability Limitations

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Senator Hoyle
Date:	June 9, 1999	**Summary by:**	Tim Hovis Committee Counsel
Version:	Proposed Committee Substitute		

SUMMARY: The Proposed Committee Substitute for Senate Bill 1005 would limit liability claims arising from Year 2000 problems by eliminating third party claims except for wrongful death or injuries to persons or property, by eliminating liability for delay or interruption in performance or the delivery of goods or services caused by or arising from a third party's Year 2000 problem, eliminating liability for employees, officers, or directors when acting in that capacity, eliminating consequential and punitive damage in matters caused by Year 2000 problems, and limiting total damages to actual damages directly resulting from the Year 2000 problem.

CURRENT LAW: Current law does not provide any special limitation on liability arising exclusively from the Year 2000 problem.

BILL ANALYSIS: The Proposed Committee Substitute creates a new Article 35 in Chapter 66 - Commerce and Business, to limit liability and damages arising from Year 2000 problems.

G.S. 66-280 sets forth the legislative purpose for this Article. In part it states that the Year 2000 problem is a one-time occurrence "for which no one person is accountable" and states that business should not have to defend lawsuits for Year 2000 problems over which the businesses and government had no control. This section states that it is the intent to place "prudent limitations on potential liability" of business while protecting people who suffer economic losses as a result of another's fault or negligence. This section makes clear that this Article does not limit State or local governments from enforcing its laws, regulations or permits.

G.S. 66-281 sets out applicable definitions for the Article, including definitions for "performed with due diligence", "Year 2000 problem", and "Year 2000 processing".

G.S. 66-282 sets out the limits on liability. For claims for damages based on Year 2000 problems against a person who has acted with reasonable care in its operations to prevent the occurrence of a Year 2000 problem, no person shall be liable:

1. To any person the person is not in privity of contract with.
2. To any person the person had not given an express warranty to.
3. To any person who is not a beneficiary of a trust the person administers.
4. For damages arising from delay or interruption of performance or delivery of goods or services in connection with a Year 2000 problem caused by a third party.

5. For damages arising from delay or interruption of performance or delivery of goods or services in connection with a Year 2000 problem resulting from a third party's Year 2000 problem.

6. To any person merely because they were acting in their capacity as an employee, officer or director.

7. For consequential or punitive damages.

Also, the total damages allowed shall not exceed the actual damages that are the direct result of theYear 2000 problem.

Subsection (b) of G.S. 66-282 provides that these limitations do not apply to wrongful death claims or claims for injuries to person or property.

Subsection (c) of this section states that it is prima facie evidence of good faith if an insured financial institution or a public utility complies with relevant directives from State or federal regulators.

G.S. 66-283 sets out a prelitigation mediation procedure to be followed prior to filing a civil action claiming damages for a Year 2000 problem. The request for mediation shall be filed by the person with the Year 2000 claim. The parties may agree on a mediator within 30 days of the filing of the request. If the parties fail to agree on a mediator, any party may apply to the clerk for the appointment of a mediator.

Within 90 days of the selection or appointment of a mediator, the mediated settlement conference shall be held. Extensions totaling not more than 30 days may be granted by the clerk or upon stipulation of the parties.

Upon conclusion of the conference, the mediator shall file a certificate with the clerk of court certifying the completion of the conference, the good faith participation by all necessary parties, and an outline of the settlement terms, if any. If the parties failed to reach a settlement, the certificate shall note the parties' failure to settle the claim.

The court shall dismiss an action without prejudice for failure to comply with this section if within 120 days after the action was filed a party files a motion to dismiss and establishes the claimant's failure to request mediation.

EFFECTIVE DATE: The bill becomes effective when it becomes law and applies to actions with claims for damages commenced on or after that date.

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

June 10, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jane Worthen Smith	AOC
Bettie W. Thorne	NCURA
Anne Winne	NCVRA
Dan Mathews	IBM
Kim Hibbard	NCLM
Melody Ray	
Esthesine Davis	ElectriCities
Jon Lemy	

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 15, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 1005 Year 2000 Liability Limitations
Sponsor: Sen. Hoyle

SB 57 Lose Control Lose Your License
Sponsor: Sen. Cooper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 15, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, June 15, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Culpepper, Jeffus, Justus, McMahan, and Pope. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

SB 1005 Year 2000 Liability Limitations. Rep. Saunders moved to adopt the new proposed committee substitute for purposes of discussion. Motion passed. Tim Hovis, staff attorney, explained that the pre-litigation section of the bill was totally rewritten. Rep. McMahan explained the goals of the bill, and Sen. Hoyle stated that he believed the committee substitute made the bill better. Rep. Pope moves for a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill. Motion passed.

SB 57 Lose Control Lose Your License. Sen. Cooper, bill sponsor, was recognized to explain the bill. He stated that this legislation was an attempt to address the problem of school violence by using a carrot and stick approach. Mack Paul of the Lieutenant Governor's office was recognized to list the supporters of the bill, which included: North Carolina PTA, SAVE (Students Against Violence Everywhere), NCAE, NCCBI (Education Committee), State Board of Community Colleges, State Board of Education, and Professional Educators of North Carolina, Inc. Deborah Ross of the ACLU voiced opposition to the bill, citing specifically the parental consent form required by the bill. The North Carolina Association of School Administrators was also opposed to the bill in its current form. Following numerous questions and comments by the committee, no vote was taken on the bill.

The meeting adjourned at 10:52 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 6/16

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 1005 A BILL TO BE ENTITLED AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR 2000 PROBLEMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ 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

governmental units have no control. This Article is intended to place prudent limitations on the potential liability of the State's business enterprises, while preserving the appropriate right of recovery by persons suffering losses. This Article does not limit enforcement of laws, regulations, or permits by State or local government bodies or agencies.

"**§ 66-281. Definitions.**

As used in this Article:

(1) 'Contractual control' means the right to direct the manner in which a party performs those contractual obligations related to the claim for which damages have been made.

(2) 'Person' means any individual, corporation, partnership, association, company, business trust, joint venture, or other legal entity.

(3) 'Performed with due diligence' means acted with reasonable care in its operations to prevent the occurence of a Year 2000 problem.

(4) 'Regulated entity' means any insured financial institution or public utility.

(5) 'Third party' means, with respect to a person against whom a claim for damages is made based upon a Year 2000 problem, any of the following:

a. A person having no affiliate relationship with and not under the contractual control of the person against whom a claim for damages is made based upon a Year 2000 problem.

b. A local, State, or federal governmental or quasi-governmental agency or entity.

c. A regulated entity.

(6) 'Year 2000 problem' means any computing, physical, enterprise, or distribution system complication that has occurred or may occur as a result of the change of the year from 1999 to 2000 in any person's technology system, including computer hardware, programs, software, or systems; embedded chip calculations or embedded systems; firmware; microprocessors; or management systems, business processes, or computing applications that govern, utilize, drive, or depend on the Year 2000 processing capability of the person's technology systems. 'Year 2000 problem' includes the common computer programming practice of using a two-digit field to represent a year, resulting in erroneous

date calculations; an ambiguous interpretation of the term or field '00'; the failure to recognize 2000 as a leap year; algorithms that use '99' or '00' to activate another function; or the failure of any other applications, software, or hardware due to their date-sensitive nature.

(7) 'Year 2000 processing' means the processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving of date or date-sensitive data from, into, or between the twentieth and twenty-first centuries, during the years 1999 and 2000, and leap year calculations.

"§ 66-282. Liability and damages limited.

(a) Subject to subsection (b) of this section, the following apply in any civil action in which the claim for damages is based upon a Year 2000 problem against a person who has performed with due diligence:

(1) No person shall be liable to any person who is (i) not in privity of contract with such person, (ii) not a person to whom an express warranty has been extended by such person, or (iii) in the case of a trust, not a beneficiary of a trust administered by such person.

(2) No person shall be liable for damages caused by a delay or interruption in performance, or in the delivery of goods or services, resulting from or in connection with (i) a Year 2000 problem to the extent such Year 2000 problem was caused by a third party or (ii) a third party's Year 2000 problem.

(3) No employee, officer, or director shall be liable to any person in his or her capacity as such.

(4) No person shall be liable for consequential or punitive damages.

(5) Total damages shall not exceed actual damages that are the direct result of a Year 2000 problem.

(b) This section does not apply to an express warranty against damages resulting from a Year 2000 problem and does not affect the right of recovery for damages in connection with wrongful death or injuries to person or tangible property.

(c) In determining whether a person performed with due diligence under subsection (a) of this section, it is prima facie evidence of due diligence for a regulated entity to comply with the relevant directives of its State or federal regulator.

"§ 66-283. Prelitigation mediation.

(a) Mediation. -- Prior to bringing a civil action claiming damages allegedly resulting from a Year 2000 problem, the person with the claim shall initiate mediation pursuant to this section. Prelitigation mediation shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the action. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(b) Mediation Procedure. -- The Supreme Court may adopt rules and standards to implement this section. Prior to the adoption of rules by the Supreme Court, rules and standards adopted pursuant to G.S. 7A-38.3 shall be applicable to this section to the extent such rules do not conflict with the provisions of this section.

(c) Waiver of Mediation. -- The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(d) Certification That Mediation Concluded. -- Immediately upon a waiver of mediation as provided in subsection (c) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as

having failed or refused to attend one or more mediation meetings or otherwise participate.

(e) Dismissal of Civil Action. -- In any civil action asserting a claim for damages allegedly resulting from a Year 2000 problem, the court shall, upon the motion of any party prior to trial, dismiss the action without prejudice for failure to comply with this section if the moving party establishes the alleged failure to comply, unless:

(1) The action has been certified as a class action;

(2) The nonmoving party establishes that the moving party was served with a copy of the request for mediation and thereafter declined to participate in a mediated settlement conference;

(3) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (d) of this section;

(4) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section; or

(5) The nonmoving party demonstrates, to the satisfaction of the court, good cause for the failure to comply with this section.

(f) Time Periods Tolled. -- Time periods relating to the filing of a claim or the taking of other action with respect to a claim for damages resulting from a Year 2000 problem, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section.

Section 2. This act is effective when it becomes law and applies to claims arising on or after that date. This act expires on December 31, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 57
Judiciary I Committee Substitute Adopted 2/24/99
Third Edition Engrossed 2/25/99

Short Title: Lose Control Lose Your License. (Public)

Sponsors:

Referred to:

February 9, 1999

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN FOR COMMITTING DESIGNATED ACTS.

The General Assembly of North Carolina enacts:

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

"(n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or license issued under this section ~~and who does not~~ must have a high school diploma or its equivalent or must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:

a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.

c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(1a) The person who is required to sign the certificate under subdivision (4) of this subsection also must show that one of the following requirements is met:

a. The person who seeks a permit or license issued under this section is not subject to subsection (n1) of this section.

b. The person who seeks a permit or license issued under this section is subject to subsection (n1) of this section and is eligible for the certificate under that subsection.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It must be signed by the applicable person named below:

a. The principal, or the principal's designee, of the public school in which the person is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.

c. The person who provides the academic instruction in the home school in which the person is enrolled.

c1. The person who provides the academic instruction in the home in accordance with an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law.

d. The designee of the board of directors of the charter school in which the person is enrolled.

e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), ~~G.S.~~ 115D-5(a3), or ~~G.S.~~ 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 2. G.S. 20-11 is amended by adding the following new subsection to read:

"(n1) Lose Control; Lose License.

(1) The following definitions apply in this subsection:

a. Applicable State entity. -- The State Board of Education for public schools and charter schools, the State Board of Community Colleges for community colleges, or the Secretary of Administration for nonpublic schools and home schools.

b. Certificate. -- A driving eligibility certificate that meets the conditions of subsection (n) of this section.

c. Disciplinary action. -- An expulsion, a suspension for more than 10 consecutive days, or an assignment to an alternative educational setting.

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. The physical assault on a teacher or other school personnel on school property.

e. School. -- A public school, charter school, community college, nonpublic school, or home school.

f. School administrator. -- The person who is required to sign certificates under subdivision (4) of subsection (n) of this section.

g. School property. -- The physical premises of the school, school buses or other vehicles under the school's control or contract and that are used to transport students, and school-sponsored or school-related activities that occur on or off the physical premises of the school.

h. Student. -- A person who desires to obtain a permit or license issued under this section.

(2) Any student who was subject to disciplinary action for enumerated student conduct that occurred either after the first day of July before the school year in which the student enrolled in the eighth grade or after the student's fourteenth birthday, whichever event occurred first, is subject to this subsection.

(3) A student who is subject to this subsection is eligible for a certificate when the school administrator determines that the student has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The enumerated student conduct occurred before the student reached the age of 15, and the student is now at least 16 years old.

b. The enumerated student conduct occurred after the student reached the age of 15, and it is at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action.

c. The student needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling

program, as appropriate, or a mental health treatment program, and no other transportation is available.

(4) A student whose permit or license is denied or revoked due to ineligibility for a certificate under this subsection may otherwise be eligible for a certificate if, after six months from the date of the ineligibility, the school administrator determines that one of the following conditions is met:

a. The student has returned to school or has been placed in an alternative educational setting, and has displayed exemplary student behavior, as defined by the applicable State entity.

b. The disciplinary action was for the possession or sale of an alcoholic beverage or an illegal controlled substance on school property, and the student subsequently attended and successfully completed, as defined by the applicable State entity, a drug or alcohol treatment counseling program, as appropriate."

Section 3. G.S. 20-13.2(c1) reads as rewritten:

"(c1) ~~The Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocations must last until the person's eighteenth birthday or until the division restores the permit or license under this subsection.~~

~~The~~ Upon receipt of notification from the proper school authority that a person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n), the Division must expeditiously notify the person that his or her permit or license is revoked effective on the tenth calendar day after the mailing of the revocation order. The Division must revoke the permit or license of that person on the tenth calendar day after the mailing of the revocation order. Notwithstanding subsection (d) of this section, the length of revocation must last for the following periods:

(1) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), then the revocation shall last until the person's eighteenth birthday.

(2) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n1), then the revocation shall be for a period of one year.

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), the Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n1), the Division shall restore a person's permit

or license before the end of the revocation period, if the person submits to the Division a driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), ~~G.S.~~ 115D-5(a3), or ~~G.S.~~ 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 4. G.S. 20-9 is amended by adding the following new subsection to read:

"(b1) The Division shall not issue a drivers license to any person whose permit or license has been suspended or revoked under G.S. 20-13.2(c1) during the suspension or revocation period, unless the Division has restored the person's permit or license under G.S. 20-13.2(c1)."

Section 5. G.S. 115C-12(28) reads as rewritten:

"(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall ~~issue rules defining~~ adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish ~~The State Board also shall issue rules for~~ the procedures a person who is or was enrolled in a public ~~school, in a~~ school or in a charter ~~school, or in a nonpublic school accredited by the Board~~ school must follow and the requirements that person ~~must~~ shall meet to obtain a driving eligibility certificate.

c. To require the ~~The~~ person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that one of the following requirements is met:

~~a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~b. A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~c. The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~

1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public ~~school, in a charter school, or in a nonpublic school accredited by the Board~~ school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools."

Section 6. G.S. 115C-566 reads as rewritten:

"**§ 115C-566. Driving eligibility certificates; requirements.**

(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, shall ~~issue~~ adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The person~~ The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is ~~currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~ eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

(2) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate.

(b) The Secretary of Administration shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in home schools or nonpublic schools.

(c) In accordance with rules adopted by the Secretary under this section, persons who are required to sign driving eligibility certificates that meet the conditions established in G.S. 20-11 shall obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles and shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets the conditions under G.S. 20-11(n)(1) or G.S. 20-11(n1)."

Section 7. G.S. 115C-288 is amended by adding the following new subsection to read:

"(k) To Sign Driving Eligibility Certificates and to Notify the Division of Motor Vehicles. -- In accordance with rules adopted by the State Board of Education, the principal or the principal's designee shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 8. G.S. 115C-238.29F is amended by adding the following new subsection to read:

"(j) Driving Eligibility Certificates. -- In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 9. G.S. 115D-5(a3) reads as rewritten:

"(a3) The State Board of Community Colleges shall ~~issue~~ adopt the following rules ~~for~~ to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The~~

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that one of the following requirements is met:

~~(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) ~~The rules shall~~ To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent."

Section 10. The State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act.

Section 11. Sections 5, 6, 9, and 10 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2000. This act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1997. This act shall apply only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

SENATE BILL 57:
Lose Control Lose Your License

BILL ANALYSIS

Committee:	Judiciary IV Committee	**Introduced by:**	Senator Cooper
Date:	June 15, 1999	**Summary by:**	Esther Manheimer and Tim Hovis Committee Counsel
Version:	Third Edition		

Summary: Senate Bill 57 would amend the law for persons under age 18 obtaining driver license privileges by conditioning their right to drive on not being expelled or suspended from school because of alcohol or drug violations, bringing illegal weapons on school property, or assaulting a teacher or other school personnel on school property.

Current law provides that anyone between the ages of 15 and 18 who does not have a high school diploma and wants to obtain or keep a limited learner's permit, learner's permit, or provisional drivers license must obtain a driving eligibility certificate showing that the person is attending school and is making satisfactory progress towards obtaining a high school diploma. If the person does not have a high school diploma or its equivalent and is not making progress towards obtaining a high school diploma or its equivalent, the person will not receive a driving eligibility certificate or the person's permit or license will be revoked.

Senate Bill 57 adds further criteria under which a person would not be issued a driving eligibility certificate or the person's permit or license would be revoked. **Under the bill a person would not be eligible to obtain a permit or license if the person was:**

- Expelled;
- Suspended for more than 10 consecutive days; or
- Assigned to an alternative educational setting for one of the following incidents:
  1. The possession or sale of alcohol or an illegal controlled substance on school property.
  2. The possession or use of a gun, rifle, pistol, or other firearm, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive on school property. (This does not include BB guns, stun guns, air rifles, air pistols, or other weapons.)
  3. The physical assault on a teacher or other school personnel on school property.
     - Note that **"school property"** includes school premises, school buses, and school-sponsored or school-related activites that occur on or off the physical premises of the school.

The driving eligibility certificate would be revoked for one year, but may be reinstated after six months if the person displays exemplary student behavior or attends and successfully completes a drug or alcohol treatment counseling program, if applicable. In addition, a driving eligibility

certificate may be issued if the person needs the certificate to drive to and from school, a drug or alcohol treatment counseling program, or mental health treatment program, and no other transportation is available. The bill applies to public schools, nonpublic schools, charter schools, home schools, and community colleges.

Section 1 amends G.S. 20-11 to provide that anyone less than 18 years old desiring to obtain a learners permit or drivers license must obtain a driving eligibility certificate certifying that the person has not been expelled or suspended from school for the enumerated offenses set forth in G.S. 20-11(n1), or if so, the person is again eligible for a driving certificate.

Section 2 creates a new subsection to G.S. 20-11 to enumerate the lose control offenses for losing driving eligibility and the basis for when eligibility is restored.

Section 3 amends G.S. 20-13.2(c1) (Grounds for revoking a provisional license) and **Section 4** amends G.S. 20-9 (What persons shall not be licensed) to provide that the revocation of permits or licenses for a lose control violation would be for a period of one year. This section also provides that the Division of Motor Vehicles (DMV) must restore a person's permit or license before the end of the revocation period if the person presents a valid driving eligibility certificate and must not issue a drivers license to any person whose permit or license was revoked. Section 3 also clarifies that the license revocation is effective the 10th day after notice of revocation is mailed to DMV.

Section 5 amends G.S. 115C-12(28) (State Board of Education – Duty to develop rules for issuance of driving eligibility certificates) and **Section 6** amends G.S. 115C-566 (Nonpublic Schools – Driving eligibility certificates; requirements) to direct the applicable State entity to adopt rules to assist public schools, nonpublic schools not accredited by the State Board of Education, and home schools in administering the provisions of G.S. 20-11(n)(1a). These sections limit the information the schools are to provide to DMV.

Section 7 amends G.S. 115C-288 (Powers and duties of principals), and **Section 8** amends G.S. 115C-238.29F (Education/Optional programs – General requirements) to require the appropriate school personnel to:

- Sign driving eligibility certificates that meet the criteria under G.S. 20-11.
- Obtain necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose necessary information to DMV.
- Notify DMV when a student who holds a driving eligibility certificate no longer meets its conditions.

Section 9 amends G.S. 115D-5(a3) (Community colleges – administration of institutions) to direct the State Board of Community Colleges to adopt rules to administer G.S. 20-11 and G.S. 20-13.2.

Section 10 directs the State Board of Education to initiate and coordinate meetings with other applicable State entities in order to develop coordinated rules, policies, and guidelines.

Section 11 provides that rule making agencies may begin adopting rules as soon as the bill becomes law. The remainder of the act is effective July 1, 2000, and applies to anyone who obtained a learners permit or drivers license after December 1, 1997. The act applies only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

This summary was contributed to by Mr. O. Walker Reagan, Research Division.

VISITOR REGISTRATION SHEET

Judiciary IV — June 15, 1999
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Hal Miller	NCACCT
Jim Blackburn	County Commissioners Association
PERRI MORGAN	NFIB
Julie Wh	Lt. Gov.
Bill Coggin	NC Bar Assoc.
Marion Smith	6-W.
Doug Register	DMV - Raleigh
Cathy Matthews	DMV Raleigh
Joe McMillan	MFDS
Melody Ray	MFS
Melissa Sarez	John Locke Foundation
Brad Sneed	DPI
Nicole Quisenberry	SBE
Alan Miles	Smith & Tipton LLP
Leslie Bevacqua	NCCBI

VISITOR REGISTRATION SHEET

STV — Name of Committee

June 15 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cavel	BPMHL
Suzanne Williams	NCCCS
Mack Paul	Office of Lt Gov
Leanne Winner	NCSBA
Cam Cartt	NCASA
Scott Hannack	NCATL
John Wilson	NCAE
Chris Wolkoff	NC Education + Law
	"
	NCBA - Volunteer
Deborah Ross	ACLU
	YAID
Alice Garland	Electric Cities
	AP
	EdHS
Carla Mell	Lt. Gov. Office

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 17, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 57 Lose Control Lose Your License
Sponsor: Sen. Cooper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 17, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, June 17, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Scott Thomas, Representatives Bowie, Decker, Earle, Jeffus, Justus, Mosley, Pope, Saunders, and Dedmon. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

SB 57 Lose Control Lose Your License. The committee resumed their discussion of this bill from the previous meeting. Rep. Saunders was recognized to offer a technical amendment. Tim Hovis, staff attorney, explained the amendment. Rep. Dedmon moved for adoption of the amendment. Motion passed. Rep. Saunders moved that the amendment be rolled into a new committee substitute and that the House committee substitute bill be given a favorable report, unfavorable as to Senate committee substitute bill. After brief remarks by the members of the committee, the motion passed.

The meeting adjourned at 10:20 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 57 A BILL TO BE ENTITLED AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN FOR COMMITTING DESIGNATED ACTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 57

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

S57-ASK-001 Page 1 of __

Date_____,1999

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

Rep. Saunders

moves to amend the bill on page 3, line 3
by rewriting that line to read:
"educational setting for more than 10 consecutive days.";

and on page 4, line 27,
by deleting the word "order" and substituting the word "notice";

and on page 4, line 29,
by deleting the word "order" and substituting the word "notice".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 57
Judiciary I Committee Substitute Adopted 2/24/99
Third Edition Engrossed 2/25/99
Proposed Committee Substitute S57-PCS3836-SK

Short Title: Lose Control Lose Your License. (Public)

Sponsors:

Referred to:

February 9, 1999

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN FOR COMMITTING DESIGNATED ACTS.

The General Assembly of North Carolina enacts:

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

"(n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or license issued under this section ~~and who does not~~ must have a high school diploma or its equivalent or must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:

a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.

c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(1a) The person who is required to sign the certificate under subdivision (4) of this subsection also must show that one of the following requirements is met:

a. The person who seeks a permit or license issued under this section is not subject to subsection (n1) of this section.

b. The person who seeks a permit or license issued under this section is subject to subsection (n1) of this section and is eligible for the certificate under that subsection.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It must be signed by the applicable person named below:

a. The principal, or the principal's designee, of the public school in which the person is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.

c. The person who provides the academic instruction in the home school in which the person is enrolled.

c1. The person who provides the academic instruction in the home in accordance with an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law.

d. The designee of the board of directors of the charter school in which the person is enrolled.

e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), ~~G.S.~~ 115D-5(a3), or ~~G.S.~~ 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 2. G.S. 20-11 is amended by adding the following new subsection to read:

"(n1) Lose Control; Lose License.

(1) The following definitions apply in this subsection:

a. Applicable State entity. -- The State Board of Education for public schools and charter schools, the State Board of Community Colleges for community colleges, or the Secretary of Administration for nonpublic schools and home schools.

b. Certificate. -- A driving eligibility certificate that meets the conditions of subsection (n) of this section.

c. Disciplinary action. -- An expulsion, a suspension for more than 10 consecutive days, or an assignment to an alternative educational setting for more than 10 consecutive days.

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. The physical assault on a teacher or other school personnel on school property.

e. School. -- A public school, charter school, community college, nonpublic school, or home school.

f. School administrator. -- The person who is required to sign certificates under subdivision (4) of subsection (n) of this section.

g. School property. -- The physical premises of the school, school buses or other vehicles under the school's control or contract and that are used to transport students, and school-sponsored or school-related activities that occur on or off the physical premises of the school.

h. Student. -- A person who desires to obtain a permit or license issued under this section.

(2) Any student who was subject to disciplinary action for enumerated student conduct that occurred either after the first day of July before the school year in which the student enrolled in the eighth grade or after the student's fourteenth birthday, whichever event occurred first, is subject to this subsection.

(3) A student who is subject to this subsection is eligible for a certificate when the school administrator determines that the student has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The enumerated student conduct occurred before the student reached the age of 15, and the student is now at least 16 years old.

b. The enumerated student conduct occurred after the student reached the age of 15, and it is at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action.

c. The student needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling

program, as appropriate, or a mental health treatment program, and no other transportation is available.

(4) A student whose permit or license is denied or revoked due to ineligibility for a certificate under this subsection may otherwise be eligible for a certificate if, after six months from the date of the ineligibility, the school administrator determines that one of the following conditions is met:

a. The student has returned to school or has been placed in an alternative educational setting, and has displayed exemplary student behavior, as defined by the applicable State entity.

b. The disciplinary action was for the possession or sale of an alcoholic beverage or an illegal controlled substance on school property, and the student subsequently attended and successfully completed, as defined by the applicable State entity, a drug or alcohol treatment counseling program, as appropriate."

Section 3. G.S. 20-13.2(c1) reads as rewritten:

"(c1) ~~The Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocations must last until the person's eighteenth birthday or until the division restores the permit or license under this subsection.~~

~~The~~ Upon receipt of notification from the proper school authority that a person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n), the Division must expeditiously notify the person that his or her permit or license is revoked effective on the tenth calendar day after the mailing of the revocation notice. The Division must revoke the permit or license of that person on the tenth calendar day after the mailing of the revocation notice. Notwithstanding subsection (d) of this section, the length of revocation must last for the following periods:

(1) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), then the revocation shall last until the person's eighteenth birthday.

(2) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n1), then the revocation shall be for a period of one year.

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), the Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n1), the Division shall restore a person's permit

or license before the end of the revocation period, if the person submits to the Division a driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with ~~G.S. 115C-12(27),~~ G.S. 115C-12(28), ~~G.S.~~ 115D-5(a3), or ~~G.S.~~ 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 4. G.S. 20-9 is amended by adding the following new subsection to read:

"(b1) The Division shall not issue a drivers license to any person whose permit or license has been suspended or revoked under G.S. 20-13.2(c1) during the suspension or revocation period, unless the Division has restored the person's permit or license under G.S. 20-13.2(c1)."

Section 5. G.S. 115C-12(28) reads as rewritten:

"(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall ~~issue rules defining~~ adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish ~~The State Board also shall issue rules for~~ the procedures a person who is or was enrolled in a public ~~school, in a~~ school or in a charter ~~school, or in a nonpublic school accredited by the Board~~ school must follow and the requirements that person ~~must~~ shall meet to obtain a driving eligibility certificate.

c. To require the ~~The~~ person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that one of the following requirements is met:

~~a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~b. A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~c. The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~

1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public ~~school, in a charter school, or in a nonpublic school accredited by the Board~~ school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools."

Section 6. G.S. 115C-566 reads as rewritten:

"**§ 115C-566. Driving eligibility certificates; requirements.**

(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, shall ~~issue~~ adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The person~~ The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is ~~currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~ eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

(2) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate.

(b) The Secretary of Administration shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in home schools or nonpublic schools.

(c) In accordance with rules adopted by the Secretary under this section, persons who are required to sign driving eligibility certificates that meet the conditions established in G.S. 20-11 shall obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles and shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets the conditions under G.S. 20-11(n)(1) or G.S. 20-11(n1)."

Section 7. G.S. 115C-288 is amended by adding the following new subsection to read:

"(k) To Sign Driving Eligibility Certificates and to Notify the Division of Motor Vehicles. -- In accordance with rules adopted by the State Board of Education, the principal or the principal's designee shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 8. G.S. 115C-238.29F is amended by adding the following new subsection to read:

"(j) Driving Eligibility Certificates. -- In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions."

Section 9. G.S. 115D-5(a3) reads as rewritten:

"(a3) The State Board of Community Colleges shall ~~issue~~ adopt the following rules ~~for~~ to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate. ~~The~~

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate ~~must~~ to provide the certificate if he or she determines that one of the following requirements is met:

~~(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

~~(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.~~

~~(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.~~

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) ~~The rules shall~~ To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent."

Section 10. The State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act.

Section 11. Sections 5, 6, 9, and 10 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2000. This act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1997. This act shall apply only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

VISITOR REGISTRATION SHEET

Judiciary IV — 6/17/99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melissa Suárez	John Locke Foundation
Gary Bellamy	SBE
[illegible]	TAP/AP
[illegible]	[illegible]
[illegible]	NCBT
[illegible]	DL/DMV
[illegible]	DMV
Cheryl Matthews	DMV
Suzanne Williams	NCCCS
Doug Jones	Lt. Governor's Office
[illegible]	Lt. Gov.
[illegible]	Lt. Gen's office
[illegible]	AP
Hal Miller	NCHECT
[illegible]	NCSBA
[illegible]	NCBA - Volunteer
[illegible]	NCAE
[illegible]	

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 22, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 12 Judicial Appointment/Voter Retention
Sponsor: Sen. Odom

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 22, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, June 22, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, McMahan, Mosley, Pope, Saunders, and Tallent. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

SB 12 Judicial Appointment/Voter Retention. Sen. Odom, bill sponsor, was recognized to explain the bill. Rep. Culpepper moved for adoption of the proposed committee substitute for purposes of discussion. Motion passed. Sen. Odom noted that the proposed committee substitute was different than the Senate version of the bill in that the Governor would make a judicial appointment without recommendation from a selection committee. Chief Justice Burley Mitchell was recognized to express his support of the bill, as well as the support of all of the members of the North Carolina Supreme Court. Justice Neal Orr spoke of the importance of this legislation, and confirmed the support of all the members of the Supreme Court. Dick Taylor of the North Carolina Trial Lawyers Association spoke against the bill. He argued that if the problem with electing judges is that that people do not know whom they are voting for, the State should take the time to educate them. Rep. Culpepper was recognized to offer a technical amendment. Tim Hovis, staff attorney, explained the amendment. Rep. Culpepper moved for adoption of the amendment, motion passed. Following debate from members of the committee, Rep. Culpepper moved that the amendment be rolled into a new committee substitute and that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. The motion passed 9-4.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 6/22

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 12 A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, GUBERNATORIAL APPOINTMENT, AND RETENTION BY VOTE OF THE PEOPLE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 12

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

S12-ARG-001

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Proposed Committee Substitute

moves to amend the bill on page 2, lines 12-13, by deleting the date "June 30" and substituting the date "December 30";

and on page 2, line 24 by deleting the date "June 30" and substituting the date "December 30";

and on page 2, line 29, by deleting the date "June 30" and substituting the date "December 30";

and on page 2, line 39 through page 3, line 2, by rewriting the lines to read:

"(3) Transition provisions. A person elected before January 1, 2001, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2001, and who is in office on January 1, 2001, may continue to serve for the remainder of the term. That person may";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 12

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

S12-ARG-001 Page 2 of __

and on page 3, line 14, by deleting the date "June 30, 2003." and substituting the date "December 31, 2002."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 4

SENATE BILL 12
Judiciary I Committee Substitute Adopted 4/26/99
Third Edition Engrossed 4/27/99
Corrected Copy 4/28/99

Short Title: Judicial App./Voter Retention. (Public)

Sponsors:

Referred to:

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, GUBERNATORIAL APPOINTMENT, AND RETENTION BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

Section 1. Section 16 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 16.** ~~**Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.**~~ **Selection and tenure of Justices of the Supreme Court and Judges of the Court of Appeals; election of Judges of the Superior Court.**

~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular~~ (1) Judges of the Superior Court ~~shall be elected by the qualified voters and~~ shall hold office for terms of eight years and until their successors are elected and qualified. ~~Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State.~~ Regular Judges of the Superior Court ~~may~~ shall be elected by the qualified voters of ~~the State or by the voters of~~ their respective ~~districts, as the General Assembly may prescribe.~~ districts.

(2) General principles. Justices and Judges of the Appellate Division should be selected for and continue to hold office solely upon the basis of personal and

professional fitness to administer justice wisely, according to law, and without favor, denial, or delay, to all persons who come into the courts. While their continuation in office should be periodically subject to approval by the people, both their initial selection and continuation in office should be free from the influences and necessities of partisan political activity.

(3) Nomination, appointment, retention election, and terms of justices and judges. On and after January 1, 2001, when a vacancy occurs in the office of Chief Justice, Associate Justice, or Judge of the Appellate Division, the Governor shall appoint a person to fill the vacancy. For the purposes of this section, creation of a new judgeship within the Appellate Division creates a vacancy.

The term of office by appointment as Chief Justice, Associate Justice, or Judge of the Appellate Division extends through June 30 after the next statewide election for members of the General Assembly that is held more than 18 months after the appointment. At that election, a person holding by appointment the office of Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief Justice, Associate Justice, or Judge of the Appellate Division then approved for retention serves a regular term.

The regular term of office of the Chief Justice, Associate Justices, and Judges of the Appellate Division is eight years and expires on June 30.

A Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention during the next general election preceding June 30 of the year that the Justice's or Judge's eight-year term would expire.

If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or Judge of the Appellate Division serving an appointed or regular term, the office shall become vacant at the end of the term of office, and it shall be filled by nomination and appointment as prescribed in this section.

Voting in a retention election on the Chief Justice, Associate Justices, and Judges of the Appellate Division shall be the qualified voters of the whole State.

(4) Transition provisions. The term of office of a person who has been elected before January 1, 2001, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2001, and who is in office on January 1, 2001, is extended through June 30 of the year following the eighth year after the date any such justice or judge was last elected to the office. If the person so elected continues to serve for the remainder of the term, that person may stand for retention in the office for a succeeding regular term as provided in this section, subject to the provisions of G.S. 7A-4.20. If the person continues to serve for the remainder of the term but does not stand for retention election, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by nomination and appointment as provided in this section.

The term of office of a person who has been appointed before January 1, 2001, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2001, and who is in office on January 1, 2001, shall end on June 30, 2003. If the person so appointed continues to serve for the remainder of the term, that person may stand for retention in the office for a regular term as provided by this section at the statewide election for members of the General Assembly held in 2002.

Upon the death, resignation, removal, or retirement of any incumbent justice or judge on or after January 1, 2001, and before the expiration of the justice's or judge's term of office, the resulting vacancy shall be filled by nomination and appointment as provided in this section.

Vacancies in judicial offices in the Appellate Division occurring before January 1, 2001, and not filled by that date, shall be filled by nomination and appointment as provided in this section.

From the date any incumbent described in this subsection is continued in office by retention vote for a term next succeeding the term in progress on January 1, 2001, or is succeeded in office by another person, the office is held subject to the provisions of this section.

(5) The General Assembly may implement this section by general law."

Section 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes.

"[ ] FOR [ ] AGAINST

Constitutional amendment to replace the present practice of selecting justices and judges of the Appellate Division by gubernatorial appointment, followed by partisan elections, with a method by which justices and judges of the Appellate Division will be nominated by a nominating commission, appointed by the Governor, and then serve for limited terms after which the question of the justice's or judge's retention in office is regularly submitted for approval or disapproval by nonpartisan vote of the people at general elections, and to provide for election of superior court judges in their districts."

Section 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 3.1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Appointment of Justices and Judges;

Retention Elections.

"§ 7A-4.1. Nomination of justices and judges by nominating commission and appointment by Governor.

The offices of Chief Justice and Justice of the Supreme Court and Judge of the Court of Appeals are filled by nomination by the Judicial Nomination Commission and appointment by the Governor in accordance with Section 16 of Article IV of the Constitution.

"§ 7A-4.2. Judicial Nomination Commission -- creation; membership; terms; administration.

(a) The Judicial Nomination Commission is created within the Administrative Office of the Courts for budgetary purposes.

(b) The Commission shall consist of 18 members as follows:

(1) A district attorney chosen by the Conference of District Attorneys;

(2) A public defender chosen by the public defenders;

(3) A superior court judge chosen by the Conference of Superior Court Judges;

(4) A district court judge chosen by the Conference of District Court Judges;

(5) A clerk of superior court chosen by the Association of Clerks of Superior Court of North Carolina;

(6) Six attorneys appointed by the Council of the State Bar to include at least one attorney actively engaged in the practice of criminal defense law, one attorney actively engaged in a civil law practice representing plaintiffs, and one attorney actively engaged in a civil law practice representing defendants;

(7) A present or former dean of an accredited law school in North Carolina appointed by the Council of the State Bar;

(8) Two nonattorneys appointed by the Governor;

(9) Two nonattorneys appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(10) Two nonattorneys appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(c) Members of the Commission shall serve for staggered four-year terms. One-half of the appointees shall serve an initial term of two years, as determined by lot at the first meeting of the Commission. The remainder of the appointees shall serve an initial term of four years. Commission members may not serve more than two consecutive terms.

(d) All members of the Commission are voting members. The members shall elect a chair at the Commission's first meeting. The chair shall preside for the duration of the chair's term as a member. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment.

(e) Members, staff, and consultants of the Commission shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, paid from funds appropriated to implement this Article and within the limits of those funds.

(f) No member of the General Assembly shall serve concurrently as a member of the Commission.

"**§ 7A-4.3. Judicial Nomination Commission; duties.**

The Commission shall:

(1) Establish operating procedures for the Commission.

(2) Solicit judicial nominations from interested persons and members of the general public to fill appellate court vacancies.

(3) Establish and publicize the procedures for submitting a candidate to be considered by the Commission.

(4) Interview and investigate candidates for judicial appointment to the appellate courts.

(5) Nominate persons to the Governor for appointment to the appellate courts.

(6) Review and evaluate the tenure of justices and judges who must stand for a retention election.

(7) Issue a report on justices and judges standing for a retention election 90 days before the retention election. The report shall include: (i) information the Commission believes would be helpful to the citizens of North Carolina; and (ii) information regarding any disciplinary action taken against a justice or judge during tenure. The report may include a recommendation by the Commission for or against the justice's or judge's retention.

(8) Perform any other duties the Commission deems necessary to carry out the mandate of this Article.

"**§ 7A-4.4. Nomination procedures.**

(a) The Commission may conduct an investigation of a nominee. The investigation may include an evaluation of the nominee's ethical conduct, the nominee's knowledge of and application of the law, the nominee's management of the courts over which he has presided, the nominee's work habits, the nominee's health, and the nominee's judicial demeanor. The nominee or judge shall be given an opportunity to present to the Commission any information that the nominee determines to be appropriate.

(b) The Commission shall be allowed to inspect the files of the Judicial Standards Commission by request of the chair of the Commission. Notwithstanding the provisions of G.S. 7A-377, the files of the Judicial Standards Commission shall be made available to the Commission. Testimony and other evidence presented to the Commission are privileged in any action for defamation.

(c) The Commission shall nominate at least three and no more than five persons to be considered by the Governor for judicial appointment within 60 days of any vacancy in office that occurs because of death, resignation, retirement, failure to be retained, or any other reason. The Governor may appoint a person who was not nominated by the Commission.

(d) The internal files and information obtained by the Commission, during the examination of a potential judicial nominee, are not public records until such time as

the candidate is recommended to the Governor for a judicial appointment. Nominations, the Commission's vote on judicial nominees, and reports made by the Commission are public records.

"**§ 7A-4.5. Governor to issue commissions to justices and judges.**

Every person duly nominated by the Judicial Nomination Commission and appointed by the Governor as Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals shall procure from the Governor a commission attesting that fact.

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election.

"**§ 7A-4.6. No elections in 2001.**

No partisan election as previously provided by law for Chief Justice or Associate Justice of the Supreme Court, or Judge of the Court of Appeals shall be held in 2001 or thereafter.

"**§ 7A-4.7. Retention elections.**

(a) As provided by Section 16 of Article IV of the Constitution of North Carolina, a Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals desiring to continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast on the issue of the justice's or judge's retention.

(b) A person subject to subsection (a) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year of the election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for filing notice under this subsection.

(c) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(d) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(e) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective."

Section 3.2. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives

(4) State ballot
(5) County ballot
(6) Repealed by Session Laws 1973, c. 793, s. 56.
(7) Ballot for constitutional amendments and other propositions submitted to the people
(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

~~All candidates for the Appellate Division shall appear on the same ballot.~~"

Section 3.3. For the purpose of Section 1 of this act, terms of justices and judges covered by Section 2 of Chapter 98 of the 1995 Session Laws are as provided by that act.

Section 3.4. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~elected by the qualified voters of the State for terms of eight years~~ selected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

Section 3.5. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon~~

~~the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.~~

~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.~~

~~Effective January 1, 1977, the number of judges is increased to 12, and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.~~

The Court of Appeals shall consist of 12 judges, selected as provided in Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

Section 3.6. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
~~Justices of the Supreme Court, Judges of the Court of Appeals~~
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

Section 3.7. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any primary in which there are ~~two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or~~ two vacancies for United States Senator from North Carolina or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination."

Section 3.8. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All ~~Justices, Judges, and~~	One percent (1%) of the annual

	salary of the office sought
District Court Judges, District Attorneys of the General Court of Justice ~~other than Superior Court Judge~~	
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Section 3.9. G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters

who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

Section 3.10. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
~~Justices, Judges, or~~ District Court Judges or District Attorneys of the General Court of Justice, other than superior court judge,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

Section 3.11. G.S. 163-177 reads as rewritten:

"**§ 163-177. Disposition of duplicate abstracts.**

Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

President and Vice-President of the United States
Governor, Lieutenant Governor, and all other State executive officers
United States Senators
Members of the House of Representatives of the United States Congress
~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice
State Senators in multi-county senatorial districts
Members of the State House of Representatives in multi-county representative districts
Constitutional amendments and propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices
State Senators in single-county senatorial districts
Members of the State House of Representatives in single-county representative districts
Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a misdemeanor. Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay."

Section 3.12. G.S. 163-192 reads as rewritten:

"**§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.**

(a) After Primary. -- At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

(1) For Governor and all State officers, ~~justices of the Supreme Court, judges of the Court of Appeals,~~ and United States Senators.
(2) For members of the United States House of Representatives for the several congressional districts in the State.

(3) For district court judges for the several district court districts in the State.

(3a) For superior court judges for the several superior court districts in the State.

(4) For district attorney in the several prosecutorial districts in the State.

(5) For State Senators in the several senatorial districts in the State composed of more than one county.

(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. -- At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.

(2) For Governor and all State officers, ~~justices of the Supreme Court, judges of the Court of Appeals,~~ and United States Senators.

(3) For members of the United States House of Representatives for the several congressional districts in the State.

(4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.

(4a) For superior court judges for the several superior court districts in the State.

(5) For district attorney in the several prosecutorial districts in the State.

(6) For State Senators in the several senatorial districts in the State composed of more than one county.

(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons

whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. -- The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177. Upon the request of the Legislative Services Office, the Secretary of State shall submit a copy of the original abstracts to that Office."

Section 3.13. G.S. 163-194 reads as rewritten:

"**§ 163-194. Governor to issue commissions to certain elected officials.**

Every person duly elected to one of the offices listed below, upon obtaining a certificate of his election from the Secretary of State under the provisions of G.S. 163-193, shall procure from the Governor a commission attesting his election to the specified office, which the Governor shall issue upon production of the Secretary of State's certificate:

Members of the United States House of Representatives,

~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice."

Section 3.14. G.S. 163-1 is amended in the table by deleting the entries for "Justices and Judges of the Appellate Division".

Section 3.15. G.S. 163-9 reads as rewritten:

"**§ 163-9. Filling vacancies in ~~State and~~ district judicial offices.**

(a) Vacancies occurring in the ~~offices of Justice of the Supreme Court, judge of the Court of Appeals, and~~ office of judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:

(1) With only one resident judge; or

(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,

shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

Section 3.16. G.S. 143-318.11(a) is amended by adding the following new subdivision:

"(8) To consider the qualifications, competence, performance, character, and fitness of a candidate who is seeking a judicial nomination to the Governor by the Judicial Nomination Commission."

Section 3.17. The General Assembly recognizes the importance of having a well-qualified and diverse group of justices and judges to serve on the State's appellate courts. In selecting persons to serve on the Judicial Nomination Commission, the appointing authority should select, from among the most qualified persons, those persons whose appointment would promote gender, ethnic, racial, and geographical diversity in the membership of the Commission. When appointing nonattorneys to the Commission, the Governor, Speaker of the House of Representatives, and the President Pro Tempore of the Senate are encouraged to consider individuals with experience in alternative dispute resolution, individuals with experience working with victim assistance programs, and individuals with an interest in children's and family issues.

Section 3.18. Sections 3.1 through 3.16 of this act are effective only if the constitutional amendment proposed by Section 1 of this act is approved by the qualified voters in accordance with Section 2 of this act.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S12-PCSRG-003
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 12
THIS IS A DRAFT 16-JUN-99 15:36:06
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Judicial App./Voter Retention. (Public)

Sponsors:

Referred to:

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL APPOINTMENT OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS AND RETENTION BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

Section 1. Section 16 of Article IV of the North Carolina Constitution reads as rewritten:

"Sec. 16. ~~Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.~~ Selection and tenure of Justices of the Supreme Court and Judges of the Court of Appeals; election of Judges of the Superior Court.

~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular~~ (1) Judges of the Superior Court ~~shall be elected by the qualified voters and~~ shall hold office for terms of eight years and until their successors are elected and qualified. ~~Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State.~~ Regular Judges of the Superior Court ~~may~~ shall be elected by the

qualified voters of ~~the State or by the voters of~~ their respective ~~districts, as the General Assembly may prescribe.~~ districts.

(2) Appointment, retention election, and terms of justices and judges of the Appellate Division. On and after January 1, 2001, when a vacancy occurs in the office of Chief Justice, Associate Justice, or Judge of the Appellate Division, the Governor shall appoint a person to fill the vacancy. For the purposes of this section, creation of a new judgeship within the Appellate Division creates a vacancy.

The term of office by appointment as Chief Justice, Associate Justice, or Judge of the Appellate Division extends through June 30 after the next statewide election for members of the General Assembly that is held more than 18 months after the appointment. At that election, a person holding by appointment the office of Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief Justice, Associate Justice, or Judge of the Appellate Division then approved for retention serves a regular term.

The regular term of office of the Chief Justice, Associate Justices, and Judges of the Appellate Division is eight years and expires on June 30.

A Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention during the next general election preceding June 30 of the year that the Justice's or Judge's eight-year term would expire.

If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or Judge of the Appellate Division serving an appointed or regular term, the office shall become vacant at the end of the term of office, and it shall be filled by appointment as prescribed in this section.

Voting in a retention election on the Chief Justice, Associate Justices, and Judges of the Appellate Division shall be the qualified voters of the whole State.

(3) Transition provisions. The term of office of a person who has been elected before January 1, 2001, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2001, and who is in office on January 1, 2001, is extended through June 30 of the year following the eighth year after the date any such justice or

judge was last elected to the office. If the person so elected continues to serve for the remainder of the term, that person may stand for retention in the office for a succeeding regular term as provided in this section, subject to the provisions of G.S. 7A-4.20. If the person continues to serve for the remainder of the term but does not stand for retention election, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this section.

The term of office of a person who has been appointed before January 1, 2001, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2001, and who is in office on January 1, 2001, shall end on June 30, 2003. If the person so appointed continues to serve for the remainder of the term, that person may stand for retention in the office for a regular term as provided by this section at the statewide election for members of the General Assembly held in 2002.

Upon the death, resignation, removal, or retirement of any incumbent justice or judge on or after January 1, 2001, and before the expiration of the justice's or judge's term of office, the resulting vacancy shall be filled by appointment as provided in this section.

Vacancies in judicial offices in the Appellate Division occurring before January 1, 2001, and not filled by that date, shall be filled by appointment as provided in this section.

From the date any incumbent described in this subsection is continued in office by retention vote for a term next succeeding the term in progress on January 1, 2001, or is succeeded in office by another person, the office is held subject to the provisions of this section.

(4) The General Assembly may implement this section by general law."

Section 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes.

"[ ] FOR [ ] AGAINST

Constitutional amendment to replace the present practice of partisan election of justices and judges of the Appellate Division with a method by which justices and judges of the Appellate Division will be appointed by the Governor and then

serve for limited terms after which the question of the justice's or judge's retention in office is regularly submitted for approval or disapproval by nonpartisan vote of the people at general elections."

Section 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 3.1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Appointment of Justices and Judges; Retention Elections.

"§ 7A-4.1. Appointment of justices and judges by Governor.

The offices of Chief Justice and Justice of the Supreme Court and Judge of the Court of Appeals are filled by appointment by the Governor in accordance with Section 16 of Article IV of the Constitution.

"§ 7A-4.2. Governor to issue commissions to justices and judges.

Every person appointed by the Governor as Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals shall procure from the Governor a commission attesting that fact.

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election.

"§ 7A-4.3. No elections in 2001.

No partisan election as previously provided by law for Chief Justice or Associate Justice of the Supreme Court, or Judge of the Court of Appeals shall be held in 2001 or thereafter.

"§ 7A-4.4. Retention elections.

(a) As provided by Section 16 of Article IV of the Constitution of North Carolina, a Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals desiring to continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast on the issue of the justice's or judge's retention.

(b) A person subject to subsection (a) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year of the

election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for filing notice under this subsection.

(c) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(d) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(e) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective.

"**§ 7A-4.5. Filing fees; refunds.**

A person filing a notice to continue in office shall pay to the State Board of Elections at the time of filing a filing fee in the amount of one percent of the annual salary of the office sought. If any person who has filed a notice under this section and paid the filing fee withdraws his or her notice prior to the date on which the right to file for that office expires, he or she shall be entitled to have the fee refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment. If any person who has filed a notice under this section and paid the filing fee dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the State Board of Elections no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of candidacy."

Section 3.2. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

(1) Ballot for presidential electors

(2) Ballot for United States Senator

(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Repealed by Session Laws 1973, c. 793, s. 56.
(7) Ballot for constitutional amendments and other propositions submitted to the people
(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

~~All candidates for the Appellate Division shall appear on the same ballot.~~"

Section 3.3. For the purpose of Section 1 of this act, terms of justices and judges covered by Section 2 of Chapter 98 of the 1995 Session Laws are as provided by that act.

Section 3.4. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~elected by the qualified voters of the State for terms of eight years~~ selected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of

Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

Section 3.5. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.~~

~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.~~

~~Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office~~

~~on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.~~

The Court of Appeals shall consist of 12 judges, selected as provided in Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

Section 3.6. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
~~Justices of the Supreme Court, Judges of the Court of Appeals~~
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators

Members of the State House of Representatives
All county offices."

Section 3.7. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any primary in which there are ~~two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or~~ two vacancies for United States Senator from North Carolina or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination."

Section 3.8. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All ~~Justices, Judges, and~~ <u>District Court Judges,</u> District Attorneys of the General Court of Justice ~~other than Superior Court Judge~~	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought

Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Section 3.9. G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition

shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

Section 3.10. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
~~Justices, Judges, or~~ District Court Judges or District Attorneys of the General Court of Justice, other than superior court judge,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and

Members of the State House of Representatives in multi-county representative districts."

Section 3.11. G.S. 163-177 reads as rewritten:

"**§ 163-177. Disposition of duplicate abstracts.**

Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

President and Vice-President of the United States

Governor, Lieutenant Governor, and all other State executive officers

United States Senators

Members of the House of Representatives of the United States Congress

~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice

State Senators in multi-county senatorial districts

Members of the State House of Representatives in multi-county representative districts

Constitutional amendments and propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices

State Senators in single-county senatorial districts

Members of the State House of Representatives in single-county representative districts

Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this

section, he shall be guilty of a misdemeanor. Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay."

Section 3.12. G.S. 163-192 reads as rewritten:

"**§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.**

(a) After Primary. -- At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

(1) For Governor and all State officers, ~~justices of the Supreme Court, judges of the Court of Appeals,~~ and United States Senators.

(2) For members of the United States House of Representatives for the several congressional districts in the State.

(3) For district court judges for the several district court districts in the State.

(3a) For superior court judges for the several superior court districts in the State.

(4) For district attorney in the several prosecutorial districts in the State.

(5) For State Senators in the several senatorial districts in the State composed of more than one county.

(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. -- At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.
(2) For Governor and all State officers, ~~justices of the Supreme Court, judges of the Court of Appeals,~~ and United States Senators.
(3) For members of the United States House of Representatives for the several congressional districts in the State.
(4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.
(4a) For superior court judges for the several superior court districts in the State.
(5) For district attorney in the several prosecutorial districts in the State.
(6) For State Senators in the several senatorial districts in the State composed of more than one county.
(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.
(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. -- The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177. Upon the request of the Legislative Services Office, the Secretary of State shall submit a copy of the original abstracts to that Office."

Section 3.13. G.S. 163-194 reads as rewritten:

"§ 163-194. Governor to issue commissions to certain elected officials.

Every person duly elected to one of the offices listed below, upon obtaining a certificate of his election from the Secretary of State under the provisions of G.S. 163-193, shall procure from the Governor a commission attesting his election to the specified office, which the Governor shall issue upon production of the Secretary of State's certificate:

Members of the United States House of Representatives,

~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice."

Section 3.14. G.S. 163-1 is amended in the table by deleting the entries for "Justices and Judges of the Appellate Division".

Section 3.15. G.S. 163-9 reads as rewritten:

"§ 163-9. Filling vacancies in ~~State and~~ district judicial offices.

(a) Vacancies occurring in the ~~offices of Justice of the Supreme Court, judge of the Court of Appeals, and~~ office of judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:

(1) With only one resident judge; or

(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,

shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor

shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

Section 3.16. Sections 3.1 through 3.15 of this act are effective only if the constitutional amendment proposed by Section 1 of this act is approved by the qualified voters in accordance with Section 2 of this act.

Section 4. This act is effective when it becomes law.

SENATE BILL 12:
Judicial Appt./Voter Retention

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Senator Odom
		Summary by:	Tim Hovis Committee Counsel
Date:	June 16, 1999		
Version:	Proposed Committee Substitute		

SUMMARY: ***Senate Bill 12 is a recommendation of the North Carolina Courts Commission. The Proposed Committee Substitute requires both a constitutional amendment and statutory changes.***

BILL ANALYSIS:

The North Carolina Constitution will be amended to provide that on and after January 1, 2001, the Governor shall appoint justices and judges of the Supreme Court and Court of Appeals.

The terms of the justices and judges appointed by the Governor under the proposed amendment, extends through June 30 after the next statewide election for members of the General Assembly that is held more than eighteen months after the date of appointment. Appointed justices and judges who thereafter wish to continue in office must be approved by voters for a regular term of eight years in a nonpartisan election.

The terms of elected appellate justices and judges who are in office on January 1, 2001, and whose terms extends beyond that date are extended through June 30 of the year following the eighth year after the date the justice or judge was last elected to office. The term of appointed appellate justices and judges in office on January 1, 2001, whose term extends beyond that date shall end on June 30, 2003. These justices and judges may stand for retention for a regular term at the 2002 election for members of the General Assembly.

STATUTORY CHANGES:

The bill enacts a new Article 1A to Chapter 7A of the General Statutes subject to the passage of the constitutional amendment. The new Article sets forth the process for appointing Appellate Court justices and judges. Article 1A also sets forth the process for retention elections.

a.) Appointment:

- The Governor will make appointments to the appellate courts.
- The Governor will issue a commission to all persons appointed to the appellate courts.

b.) Retention Election:

- A Chief Justice or Associate Justice of the Supreme Court or a Judge of the Court of Appeals who wishes to remain in office must file a notice of this intent with the Board of Elections.
- Notice can be withdrawn at any time prior to the deadline for filing notice.

- Retention elections are nonpartisan.
- Retention elections shall be placed at the top of the ballot.
- A filing fee in the amount of one percent of the annual salary of the office sought must be paid at the time of filing

The proposed committee substitute provides that there will not be any partisan elections for Chief Justice or Associate Justice of the Supreme Court, or Judge of the Court of Appeals held in 2001 or thereafter. The bill also makes several conforming changes to existing law. The act would become effective when it becomes law subject to voter approval of the constitutional amendment.

This summary was contributed to by Ms. Jo McCants, Staff Attorney

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

6/22/99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Donald Smith	N.C. Court of Appeals
Christy Wilhelm	Governor's Office
Sarah Parker	NC Supreme Court
Sid Eagles	N.C. Court of Appeals
John Mellon	NCAE
Alice City	ACLU
Seth Jaffe	ACLU
Jacob Kline	ACLU
John Martin	NC Court of Appeals
Charles Cromer	NCATL
Mark Martin	NC Supreme Court
Burton Craige	NCATL
Stella Boswell	NCATL
Scott Hammack	NCATL
Leto Copley	NCAWA

NORTH CAROLINA HOUSE OF REPRESENTATIVES
NOTIFICATION TO BILL SPONSOR

BILL SPONSOR: **Sen. Fountain Odom**

OFFICE: **Room 300B LOB**

DATE: **June 17, 1999**

The House Committee on **Judiciary IV** will meet as follows:

DAY & DATE: **Tuesday, June 22, 1999**

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

LOCATION: **Room 421 LOB**

Your Bill (or Bills) will be discussed at this time:
SB 12 Judicial Appt./Voter Retention

We would like to have you attend this meeting.

Representative Baddour
Chairman

Elizabeth Kirkland (Committee Assistant)

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
BOB ORR	NC Supreme Court
Phil Kirk	NCCBI
Burley Mitchell	Supreme Court

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 29, 1999
7:30 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 690 District Court Elections Nonpartisan
Sponsor: Sen. Dalton

SB 974 Vacation Rental Act
Sponsor: Sen. Soles

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 29, 1999 – 7:30 a.m.

The House Committee on Judiciary IV met on Tuesday, June 29, 1999, in Room 421 LOB at 7:30 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Jeffus, Justus, Pope, Saunders, and Tallent. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

SB 690 District Court Elections Nonpartisan. Sen. Dalton, bill sponsor, was recognized to explain the bill. He noted that this was a simple common sense bill that brought the election of district court judges in line with the election of superior court judges. District Court Judge Robert Rader spoke in favor of the bill citing that there was no place for partisan politics in the election of judges. Rep. Saunders questioned whether or not this bill had benefits for a particular party, Sen. Dalton responded by saying that it did not. Rep. Thomas voiced his support of the bill. Rep. Bowie questioned the reasoning behind the bill, and Sen. Dalton explained that the bill would improve the perception of justice among the people of North Carolina. Rep. Pope questioned how the primary would work, and Sen. Dalton explained that it would be the same as primaries for superior court judges. Representatives of the North Carolina Academy of Trial Lawyers and the North Carolina Bar Association were present to voice their support of the bill. Rep. Justus voiced his opposition to the bill citing that there was no such thing as a nonpartisan election. Rep. Thomas moved for a favorable report, and the motion passed.

SB 974 Vacation Rental Act. Sen. Soles, bill sponsor, was recognized to explain the bill. Rep. Justus moved that the proposed committee substitute be adopted by the committee for purposes of discussion. Motion passed. Esther Manheimer, staff attorney, outlined the changes made in the proposed committee substitute. The staff summary is attached for the record. Tom Miller of the Insurance Commission spoke in support of the bill and answered questions from the committee. Reps. Haire and Bowie voiced their concern with regard to the section of the bill that dealt with vacation packages and third party responsibility. Following numerous questions from the committee, the meeting adjourned and no vote was taken.

The meeting adjourned at 8:30 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

reported 6/30

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
S.B. 690 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

☒ 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 690

Short Title: District Court Elections Nonpartisan. (Public)

Sponsors: Senators Dalton; Gulley, Miller, and Odom.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

Section 1. Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"ARTICLE 25.

"Nomination and Election of Superior and District Court Judges.

"**§ 163-321. Applicability.**

The nomination and election of superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. -- Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. -- In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. -- In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. -- Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date_____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed_____:

(Name of Candidate)

Witness:_____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. -- Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. -- Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. -- Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. -- No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"**§ 163-324. Filing fees required of candidates; refunds.**

(a) Fee Schedule. -- At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. -- If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"**§ 163-325. Petition in lieu of payment of filing fee.**

(a) General. -- Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. -- If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"**§ 163-326. Certification of notices of candidacy.**

(a) Names of Candidates Sent to Secretary of State. -- Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board

shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. -- No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(c) Receipt of Notification by County Board. -- Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"§ 163-327. Death of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. -- If a candidate for nomination in a primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. -- If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"§ 163-328. Failure of candidates to file; death of a candidate before election.

(a) Insufficient Number of Candidates. -- If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death of Candidate; Reopening Filing. -- If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing

period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Death of Nominated Candidate; Ballots Not Reprinted. -- If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.

(a) General. -- If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. -- Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those

candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"§ 163-330. Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"§ 163-332. Ballots.

(a) General. -- In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. -- It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"§ 163-333. Canvass.

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted

for, and the total number of votes cast in the county for each person for each different office.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

Section 2. (a) G.S. 7A-142 reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations.

(b) Effective on the first Monday in December of 2002, G.S. 7A-142 as amended by subsection (a) of this section reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. ~~If the district court judge was elected as the nominee of a political party, then the district bar shall submit to~~

~~the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.~~ If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

Section 3. G.S. 163-106 reads as rewritten:

"**§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

(a) Notice and Pledge. -- No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date .....

I hereby file notice as a candidate for nomination as ..... in the ..... party primary election to be held on ....., ~~19~~..... I affiliate with the ..... party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ..... party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed.....

Name of candidate

Witness:

.....

.....

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. -- No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
~~Judges of the district courts~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North ~~Carolina or two or more vacancies for the office of district court judge to be filled by nominations,~~ Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

~~A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.~~

(e) Withdrawal of Notice of Candidacy. -- Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

~~(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

Section 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior <u>and</u> <u>district</u> court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual

	salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Section 5. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify

such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court judge,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

Section 6. G.S. 163-140(a)(8) reads as rewritten:

"(8) Judicial ballot for superior and district court."

Section 7. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. -- If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and ~~judge of the District Court or~~ members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

Section 8. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition

in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives ~~Judge of district court~~ District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies

the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Section 9. G.S. 163-135(f) reads as rewritten:

"(f) Judicial Elections. -- Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the ~~superior court.~~ superior and district courts."

Section 10. G.S. 163-140(b)(9) reads as rewritten:

"(9) Judicial ballot for superior and district court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

Section 11. G.S. 163-191 reads as rewritten:

"**§ 163-191. Contested primaries and elections; how tie broken.**

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior or district court judge the tie shall be broken in accordance with Article 25 of this Chapter."

Section 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 974*
Commerce Committee Substitute Adopted 4/27/99

Short Title: Vacation Rental Act. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR VACATION, LEISURE, OR RECREATION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 42A.

"Vacation Rental Act.

"ARTICLE 1.

"Vacation Rentals.

"**§ 42A-1. Title.**

This Chapter shall be known as the North Carolina Vacation Rental Act.

"**§ 42A-2. Purpose and scope of act.**

The General Assembly finds that the growth of the tourism industry in North Carolina has led to a greatly expanded market of privately owned residences that are rented to tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by the owners of these residences or licensed real estate brokers acting on their behalf present unique situations not normally found in the rental of primary residences for long terms, and therefore make it necessary for the General Assembly to enact laws regulating the competing interests of landlords, real estate brokers, and tenants.

"**§ 42A-3. Application; exemptions.**

(a) The provisions of this Chapter shall apply to any person, partnership, corporation, limited liability company, association, or other business entity who acts as a landlord or real estate broker engaged in the rental or management of residential property for vacation rental as defined in this Chapter.

(b) The provisions of this Chapter shall not apply to:

(1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes.

(2) Rentals to persons temporarily renting a dwelling unit when traveling away from their home for business or employment purposes.

(3) Rentals to persons having no other place of permanent residence.

(4) Rentals for which no more than nominal consideration is given.

"**§ 42A-4. Definitions.**

The following definitions apply in this Chapter:

(1) Residential property. -- An apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period.

(2) Vacation rental. -- The rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return.

(3) Vacation rental agreement. -- A written agreement between a landlord or his or her real estate broker and a tenant in which the tenant agrees to rent residential property belonging to the landlord for a vacation rental.

"ARTICLE 2.

"Vacation Rental Agreements.

"**§ 42A-10. Written agreement required.**

(a) A landlord or real estate broker and tenant shall execute a vacation rental agreement for all vacation rentals subject to the provisions of this Chapter. No vacation rental agreement shall be valid and enforceable unless the tenant has accepted the agreement as evidenced by one of the following:

(1) The tenant's signature on the agreement.

(2) The tenant's payment of any monies to the landlord or real estate broker after the tenant's receipt of the agreement.

(3) The tenant's possession of the property after the tenant's receipt of the agreement.

(b) Any real estate broker who executes a vacation rental agreement that does not conform to the provisions of this Chapter or fails to execute a vacation rental agreement shall be guilty of an unfair trade practice in violation of G.S. 75-1.1, and shall be prohibited from commencing an expedited eviction proceeding as provided in Article 4 of this Chapter.

"**§ 42A-11. Vacation rental agreements.**

(a) A vacation rental agreement executed under this Chapter shall contain the following notice on its face which shall be set forth in a clear and conspicuous manner that distinguishes it from other provisions of the agreement: 'THIS IS A VACATION RENTAL AGREEMENT UNDER THE NORTH CAROLINA VACATION RENTAL ACT. THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE DEFINED BY LAW AND INCLUDE UNIQUE PROVISIONS PERMITTING THE DISBURSEMENT OF RENT AND EXPEDITED EVICTION OF TENANTS. YOUR SIGNATURE ON THIS AGREEMENT, PAYMENT OF MONEY, OR POSSESSION OF THE PROPERTY IS CONCLUSIVE PROOF OF YOUR ACCEPTANCE OF THE AGREEMENT AND YOUR INTENT TO USE THIS PROPERTY FOR A VACATION RENTAL.'

(b) The vacation rental agreement shall contain provisions separate from the requirements of subsection (a) of this section which shall describe the following as permitted or required by this Chapter:

(1) The manner in which funds shall be received, deposited, and disbursed in advance of the tenant's occupancy of the property.

(2) The imposition of any nonrefundable charges.

(3) The applicability of expedited eviction procedures.

(4) A description of the obligations of the landlord and tenant as provided by this Chapter.

"ARTICLE 3.

"Handling and Accounting of Funds.

"§ 42A-15. Trust account uses.

A landlord or real estate broker may require a tenant to pay all or part of any required rent, security deposit, or other fees permitted by law in advance of the commencement of a tenancy under this Chapter if advance payments are expressly authorized in the vacation rental agreement. If the tenant is required to make any advance payments, other than a security deposit, whether the payment is denominated as rent or otherwise, the landlord or real estate broker shall deposit the advance payments in a trust or escrow account in an insured bank or savings and loan association in North Carolina no later than three banking days after the receipt of the advance payments. Advance payments deposited in a trust account shall not earn interest unless the landlord and tenant agree in the vacation rental agreement that the payments may be deposited in an interest-bearing account. The landlord and tenant shall also provide in the agreement to whom the accrued interest shall be disbursed.

"§ 42A-16. Advance payments uses.

(a) A landlord or real estate broker shall not disburse an amount greater than fifty percent (50%) of the gross rent prior to the occupancy of the property by the tenant, but may disburse any nonrefundable fees to third parties to pay for goods, services, or benefits procured by the landlord or real estate broker for the benefit of the tenant if the disbursement is expressly authorized in the vacation rental agreement. The remaining funds shall be maintained in a trust account and may not be disbursed until the occurrence of one of the following:

(1) The commencement of the tenancy, at which time the remaining funds may be disbursed in accordance with the terms of the agreement.

(2) The tenant commits a material breach, at which time the landlord may retain an amount sufficient to defray the actual damages suffered by the landlord as a result of the breach.

(3) The landlord or real estate broker refunds the money to the tenant.

(b) Funds collected for sales or occupancy taxes and tenant security deposits shall not be disbursed from the trust or escrow account prior to occupancy of the property by the tenant, except as a refund to the tenant.

(c) The tenant's execution of a vacation rental agreement in which he or she agrees to the advance disbursement of payments shall not constitute a waiver or loss of any of the tenant's rights to reimbursement of such payments if the tenant is lawfully entitled to reimbursement.

"**§ 42A-17. Accounting; reimbursement; nonrefundable fees.**

(a) A vacation rental agreement shall identify the name and address of the bank or savings and loan association in which the tenant's security deposit and other advance payments are held in a trust or escrow account, and the landlord or real estate broker shall provide the tenant with an accounting of such deposit and payments if the tenant makes a reasonable request for an accounting prior to the tenant's occupancy of the property.

(b) If, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord or real estate broker shall refund to the tenant all payments made by the tenant, except any nonrefundable fees permitted in subsection (c) of this section.

(c) A vacation rental agreement may provide that the following fees shall be nonrefundable:

(1) A fee, the amount of which shall be provided in the agreement, reasonably calculated to cover the costs of processing the tenant's reservation, transfer, or cancellation of a vacation rental.

(2) A fee equaling the actual cost of services, goods, or benefits to be rendered to the tenant by a third party.

"**§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.**

(a) Except as may otherwise be provided in this Chapter, all funds collected from a tenant and not identified in the vacation rental agreement as occupancy or sales taxes, nonrefundable fees, or advance rent payments shall be considered a tenant security deposit and shall be subject to the provisions of the Residential Tenant Security Deposit Act, as codified in Article 6 of Chapter 42 of the General Statutes. In addition to the permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under this Chapter, deduct from any tenant security deposit the amount of any telephone calls or other utility charges that are the obligation of the tenant under the vacation rental agreement and are left unpaid by the tenant at the conclusion of the

tenancy. The landlord or real estate broker shall apply, account for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy.

(b) A vacation rental agreement shall not contain language compelling or permitting the automatic forfeiture of all or part of a tenant security deposit in case of breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation rental agreement shall provide that a tenant security deposit may be applied to actual damages caused by the tenant.

"§ 42A-19. Transfer of property subject to a vacation rental agreement.

(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take his or her title subject to the vacation rental agreement if the vacation rental is to begin and end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. The landlord or real estate broker shall disclose to the grantee the tenant's name and address and shall provide the grantee with a copy of the vacation rental agreement. Within 10 days after the recording of the grantee's interest in the property, the grantee shall:

(1) Notify the tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.

(2) Advise the tenant of his or her right to occupy the property subject to the terms of the vacation rental agreement.

(3) Advise the tenant of his or her right to receive a refund of any payments made by him or her.

If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a refund of any advance payments made by him or her.

(b) If, prior to the tenant's occupancy of the property, the landlord's interest in the property is involuntarily transferred to another, the landlord shall refund to the tenant within 60 days after the transfer any advance payments made by the tenant.

(c) The failure of a landlord to comply with the provisions of this section shall constitute an unfair trade practice in violation of G.S. 75-1.1.

"ARTICLE 4.

"Expedited Eviction Proceedings.

"§ 42A-23. Grounds for eviction.

(a) Any tenant who leases residential property under this Chapter for 30 days or less may be evicted and removed from the property in an expedited eviction proceeding as provided in this Article if the tenant does one of the following:

(1) Holds over possession after his or her tenancy has expired.

(2) Has committed a material breach of the terms of the vacation rental agreement that, according to the terms of the agreement, results in the termination of his or her tenancy.

(3) Fails to pay rent as required by the agreement.

(4) Has obtained possession of the property by fraud or misrepresentation.

(b) Only the right to possession, including abandoned property, damages to the property, rights to setoffs for breach of contract, and other similar rights shall be relevant in an expedited eviction proceeding. All other issues related to the rental of the residential property shall be presented in a separate civil action.

"**§ 42A-24. Expedited eviction.**

(a) Before commencing an expedited eviction proceeding, the landlord or real estate broker shall give the tenant at least four hours' notice, either orally or in writing, to quit the premises. If reasonable efforts to personally give oral or written notice have failed, written notice may be given by posting the notice on the front door of the property.

(b) An expedited eviction proceeding shall commence with the filing of a complaint and issuance of summons in the county where the property is located. If the office of the clerk of superior court is closed, the complaint shall be filed with, and the summons issued by, a magistrate. The service of the summons and complaint for expedited eviction shall be made by a sworn law enforcement officer on the tenant personally or by posting a copy of the summons and complaint on the front door of the property. Return of service shall be promptly made by the law enforcement officer to the magistrate. A hearing on the expedited eviction shall be held before a magistrate in the county where the property is located not sooner than 12 hours after service upon the tenant and no later than 48 hours after such service.

(c) The complaint for expedited eviction shall allege and the landlord or real estate broker shall prove the following at the hearing:

(1) The vacation rental is for a term of 30 days or less.

(2) The tenant entered into and accepted a vacation rental agreement that conforms to the provisions of this Chapter.

(3) The tenant committed one or more of the acts listed in G.S. 42A-23(a) as grounds for eviction.

(4) The landlord or real estate broker has given notice to the tenant to vacate as a result of the breach.

The rules of evidence shall not apply in an expedited eviction proceeding, and the court shall allow any reasonably reliable and material statements, documents, or other exhibits to be admitted as evidence.

(d) If the court finds for the landlord or real estate broker, the court shall immediately enter a written order stating the time when the tenant shall vacate the property, but in no case shall the time be less than 2 hours or more than 8 hours after service of the order on the tenant. The court's order shall be served on the tenant at the hearing. If the tenant does not appear at the hearing or leaves before the order is served, the order shall be served by delivering the order to the tenant or by posting the order on the front door of the property by the landlord, real estate broker, or any sworn law enforcement officer.

"**§ 42A-25. Appeal.**

A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d) to district court. A tenant may petition the district court to stay the eviction order and shall post a cash or secured bond with the court. The amount of the bond shall be an estimate of the rent that will become due while the tenant is prosecuting the appeal, reasonable damages that the landlord may suffer, including damage to property and damages arising from the inability of the landlord or real estate broker to honor other vacation rental agreements due to the tenant's possession of the property, and the costs of the appeal to the landlord or real estate broker.

"§ 42A-26. Violation of court order.

If a tenant fails to remove personal property from a residential property subject to a vacation rental after the court has entered an order of eviction, the landlord or real estate broker shall have the same rights as provided in G.S. 42-36.2(b) as if the sheriff had not removed the tenant's property. The failure of a tenant or the guest of a tenant to vacate a residential property in accordance with a court order issued pursuant to G.S. 42A-24(d) shall constitute a criminal trespass under G.S. 14-159.13.

"§ 42A-27. Penalties for abuse.

A landlord or real estate broker shall undertake to evict a tenant pursuant to an expedited eviction proceeding only when he or she has a good faith belief that grounds for eviction exists under the provisions of this Chapter. Otherwise, the landlord or real estate broker shall be guilty of an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor.

"ARTICLE 5.

"Landlord and Tenant Duties.

"§ 42A-31. Landlord to provide fit premises.

A landlord of a residential property used for a vacation rental shall:

(1) Comply with all current applicable building and housing codes.

(2) Make all repairs and do whatever is reasonably necessary to put and keep the property in a fit and habitable condition.

(3) Keep all common areas of the property in safe condition.

(4) Maintain in good and safe working order and reasonably and promptly repair all electrical, plumbing, sanitary, heating, ventilating, and other facilities and major appliances supplied by him or her upon written notification from the tenant that repairs are needed.

(5) Provide operable smoke detectors. The landlord shall replace or repair the smoke detectors if the landlord is notified by the tenant in writing that replacement or repair is needed. The landlord shall annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"**§ 42A-32. Tenant to maintain dwelling unit.**

The tenant of a residential property used for a vacation rental shall:

(1) Keep that part of the property which he or she occupies and uses as clean and safe as the conditions of the property permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the property that he or she uses.

(2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner.

(3) Keep all plumbing fixtures in the property or used by the tenant as clean as their condition permits.

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the property or render inoperable the smoke detector provided by the landlord or knowingly permit any person to do so.

(5) Comply with all obligations imposed upon the tenant by current applicable building and housing codes.

(6) Be responsible for all damage, defacement, or removal of any property inside the property that is in his or her exclusive control unless the damage, defacement, or removal was due to ordinary wear and tear, acts of the landlord or his or her agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.

(7) Notify the landlord of the need for replacement of or repairs to a smoke detector. The landlord shall annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or the landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"ARTICLE 6.

"General Provisions.

"**§ 42A-36. Mandatory evacuations.**

If State or local authorities order a mandatory evacuation of an area that includes a residential property subject to a vacation rental, the tenant in possession of the property shall comply with the evacuation order and, upon compliance, shall be entitled to a refund from the landlord of the prorated rent for each day that the tenant was unable to occupy the property because of the evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated him or her for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North

Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the gross rent charged for the vacation rental.

"**§ 42A-37. Late fees.**

The provisions of Chapter 42 pertaining to the imposition of late fees shall not apply to vacation rentals under this Chapter."

Section 2. This act becomes effective January 1, 2000, and applies to rental agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 974*
Commerce Committee Substitute Adopted 4/27/99
Proposed Committee Substitute S974-PCS8618-SG

Short Title: Vacation Rental Act. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR VACATION, LEISURE, OR RECREATIONAL PURPOSES, AND CLARIFYING THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS OF RESIDENTIAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 42A.

"Vacation Rental Act.

"ARTICLE 1.

"Vacation Rentals.

"**§ 42A-1. Title.**

This Chapter shall be known as the North Carolina Vacation Rental Act.

"**§ 42A-2. Purpose and scope of act.**

The General Assembly finds that the growth of the tourism industry in North Carolina has led to a greatly expanded market of privately owned residences that are rented to tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by the owners of these residences or licensed real estate brokers acting on their behalf present unique situations not normally found in the rental of primary residences for long terms, and therefore make it necessary for the General Assembly

to enact laws regulating the competing interests of landlords, real estate brokers, and tenants.

"**§ 42A-3. Application; exemptions.**

(a) The provisions of this Chapter shall apply to any person, partnership, corporation, limited liability company, association, or other business entity who acts as a landlord or real estate broker engaged in the rental or management of residential property for vacation rental as defined in this Chapter.

(b) The provisions of this Chapter shall not apply to:

(1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes.

(2) Rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes.

(3) Rentals to persons having no other place of primary residence.

(4) Rentals for which no more than nominal consideration is given.

"**§ 42A-4. Definitions.**

The following definitions apply in this Chapter:

(1) Real estate broker. -- A real estate broker as defined in G.S. 93A-2(a).

(2) Residential property. -- An apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period.

(3) Vacation rental. -- The rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return.

(4) Vacation rental agreement. -- A written agreement between a landlord or his or her real estate broker and a tenant in which the tenant agrees to rent residential property belonging to the landlord for a vacation rental.

"ARTICLE 2.

"Vacation Rental Agreements.

"**§ 42A-10. Written agreement required.**

(a) A landlord or real estate broker and tenant shall execute a vacation rental agreement for all vacation rentals subject to the provisions of this Chapter. No vacation rental agreement shall be valid and enforceable unless the tenant has accepted the agreement as evidenced by one of the following:

(1) The tenant's signature on the agreement.

(2) The tenant's payment of any monies to the landlord or real estate broker after the tenant's receipt of the agreement.

(3) The tenant's taking possession of the property after the tenant's receipt of the agreement.

(b) Any real estate broker who executes a vacation rental agreement that does not conform to the provisions of this Chapter or fails to execute a vacation rental agreement shall be guilty of an unfair trade practice in violation of G.S. 75-1.1, and shall be prohibited from commencing an expedited eviction proceeding as provided in Article 4 of this Chapter.

"§ 42A-11. Vacation rental agreements.

(a) A vacation rental agreement executed under this Chapter shall contain the following notice on its face which shall be set forth in a clear and conspicuous manner that distinguishes it from other provisions of the agreement: 'THIS IS A VACATION RENTAL AGREEMENT UNDER THE NORTH CAROLINA VACATION RENTAL ACT. THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE DEFINED BY LAW AND INCLUDE UNIQUE PROVISIONS PERMITTING THE DISBURSEMENT OF RENT PRIOR TO TENANCY AND EXPEDITED EVICTION OF TENANTS. YOUR SIGNATURE ON THIS AGREEMENT, OR PAYMENT OF MONEY OR TAKING POSSESSION OF THE PROPERTY AFTER RECEIPT OF THE AGREEMENT, IS EVIDENCE OF YOUR ACCEPTANCE OF THE AGREEMENT AND YOUR INTENT TO USE THIS PROPERTY FOR A VACATION RENTAL.'

(b) The vacation rental agreement shall contain provisions separate from the requirements of subsection (a) of this section which shall describe the following as permitted or required by this Chapter:

(1) The manner in which funds shall be received, deposited, and disbursed in advance of the tenant's occupancy of the property.
(2) Any processing fees permitted under G.S. 42A-17(c).
(3) The rights and obligations of the landlord and tenant under G.S. 42A-17(b).
(4) The applicability of expedited eviction procedures.
(5) The rights and obligations of the landlord or real estate broker and the tenant upon the transfer of the property.
(6) The rights and obligations of the landlord or real estate broker and the tenant under G.S. 42A-36.
(7) Any other obligations of the landlord and tenant.

"ARTICLE 3.

"Handling and Accounting of Funds.

"§ 42A-15. Trust account uses.

A landlord or real estate broker may require a tenant to pay all or part of any required rent, security deposit, or other fees permitted by law in advance of the commencement of a tenancy under this Chapter if these payments are expressly authorized in the vacation rental agreement. If the tenant is required to make any advance payments, other than a security deposit, whether the payment is denominated as rent or otherwise, the landlord or real estate broker shall deposit these payments in a trust account in an insured bank or savings and loan association in North Carolina no later than three banking days after the receipt of the these payments. These payments deposited in a trust account shall not earn interest unless

the landlord and tenant agree in the vacation rental agreement that the payments may be deposited in an interest-bearing account. The landlord and tenant shall also provide in the agreement to whom the accrued interest shall be disbursed.

"**§ 42A-16. Advance payments uses.**

(a) A landlord or real estate broker shall not disburse prior to the occupancy of the property by the tenant an amount greater than fifty percent (50%) of the total rent except as permitted pursuant to this subsection. A landlord or real estate broker may disburse prior to the occupancy of the property by the tenant any fees owed to third parties to pay for goods, services, or benefits procured by the landlord or real estate broker for the benefit of the tenant, including administrative fees permitted by G.S. 42A-17(c), if the disbursement is expressly authorized in the vacation rental agreement. The funds remaining after any disbursment permitted under this subsection shall remain in the trust account and may not be disbursed until the occurrence of one of the following:

(1) The commencement of the tenancy, at which time the remaining funds may be disbursed in accordance with the terms of the agreement.

(2) The tenant commits a material breach, at which time the landlord may retain an amount sufficient to defray the actual damages suffered by the landlord as a result of the breach.

(3) The landlord or real estate broker refunds the money to the tenant.

(4) The funds in the trust account are transferred in accordance with G.S. 42A-19(b) upon the termination of the landlord's interest in the property.

(b) Funds collected for sales or occupancy taxes and tenant security deposits shall not be disbursed from the trust account prior to termination of the tenancy or material breach of the agreement by the tenant, except as a refund to the tenant.

(c) The tenant's execution of a vacation rental agreement in which he or she agrees to the advance disbursement of payments shall not constitute a waiver or loss of any of the tenant's rights to reimbursement of such payments if the tenant is lawfully entitled to reimbursement.

"**§ 42A-17. Accounting; reimbursement.**

(a) A vacation rental agreement shall identify the name and address of the bank or savings and loan association in which the tenant's security deposit and other advance payments are held in a trust account, and the landlord and real estate broker shall provide the tenant with an accounting of such deposit and payments if the tenant makes a reasonable request for an accounting prior to the tenant's occupancy of the property.

(b) Except as otherwise provided in this subsection, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant. The landlord and real estate broker shall not be required to refund any payments collected from the tenant and obligated or

disbursed to a third party equaling the actual costs of services, goods, or benefits to be rendered to the tenant by the third party.

(c) A vacation rental agreement may include administrative fees, the amounts of which shall be provided in the agreement, reasonably calculated to cover the costs of processing the tenant's reservation, transfer, or cancellation of a vacation rental.

"§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.

(a) Except as may otherwise be provided in this Chapter, all funds collected from a tenant and not identified in the vacation rental agreement as occupancy or sales taxes, fees, or rent payments shall be considered a tenant security deposit and shall be subject to the provisions of the Residential Tenant Security Deposit Act, as codified in Article 6 of Chapter 42 of the General Statutes. Funds collected as a tenant security deposit in connection with a vacation rental shall be deposited into a trust account as required by G.S. 42-50. The landlord or real estate broker shall not have the option of obtaining a bond in lieu of maintaining security deposit funds in a trust account. In addition to the permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under this Chapter, deduct from any tenant security deposit the amount of any telephone charges, cable television charges, or other utility charges that are the obligation of the tenant under the vacation rental agreement and are left unpaid by the tenant at the conclusion of the tenancy. The landlord or real estate broker shall apply, account for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy.

(b) A vacation rental agreement shall not contain language compelling or permitting the automatic forfeiture of all or part of a tenant security deposit in case of breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation rental agreement shall provide that a tenant security deposit may be applied to actual damages caused by the tenant as permitted under Article 6 of Chapter 42 of the General Statutes.

"§ 42A-19. Transfer of property subject to a vacation rental agreement.

(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take his or her title subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a refund of any payments made by him or her. Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after the transfer of the property the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. Not later than 10 days after receiving each tenant's name and address and copies of each vacation rental agreement from the landlord, the grantee shall:

(1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.

(2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.

(3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

(b) Except as otherwise provided in this subsection, upon termination of the landlord's interest in the residential property subject to a vacation rental agreement, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the transferee's name and address. For vacation rentals that end more than 180 days after the recording of the interest of the landlord's successor in interest, unless the landlord's successor in interest has agreed in writing to honor the vacation rental agreement, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the tenant. Compliance with this subsection shall relieve the landlord or real estate broker of further liability with respect to any payment of rent or fees. Funds held as a security deposit shall be disbursed in accordance with G.S. 42A-18.

(c) If, prior to the tenant's occupancy of the property, the landlord's interest in the property is involuntarily transferred to another, the landlord shall refund to the tenant within 60 days after the transfer any payments made by the tenant.

(d) The failure of a landlord to comply with the provisions of this section shall constitute an unfair trade practice in violation of G.S. 75-1.1. A landlord who complies with the requirements of this section shall have no further obligations to the tenant.

"ARTICLE 4.

"Expedited Eviction Proceedings.

"§ 42A-23. Grounds for eviction.

(a) Any tenant who leases residential property subject to a vacation rental agreement under this Chapter for 30 days or less may be evicted and removed from the property in an expedited eviction proceeding brought by the landlord, or real estate broker as agent for the landlord, as provided in this Article if the tenant does one of the following:

(1) Holds over possession after his or her tenancy has expired.

(2) Has committed a material breach of the terms of the vacation rental agreement that, according to the terms of the agreement, results in the termination of his or her tenancy.

(3) Fails to pay rent as required by the agreement.

(4) Has obtained possession of the property by fraud or misrepresentation.

(b) Only the right to possession shall be relevant in an expedited eviction proceeding. All other issues related to the rental of the residential property shall be presented in a separate civil action.

"**§ 42A-24. Expedited eviction.**

(a) Before commencing an expedited eviction proceeding, the landlord or real estate broker shall give the tenant at least four hours' notice, either orally or in writing, to quit the premises. If reasonable efforts to personally give oral or written notice have failed, written notice may be given by posting the notice on the front door of the property.

(b) An expedited eviction proceeding shall commence with the filing of a complaint and issuance of summons in the county where the property is located. If the office of the clerk of superior court is closed, the complaint shall be filed with, and the summons issued by, a magistrate. The service of the summons and complaint for expedited eviction shall be made by a sworn law enforcement officer on the tenant personally or by posting a copy of the summons and complaint on the front door of the property. The officer, upon service, shall promptly file a return therefor. A hearing on the expedited eviction shall be held before a magistrate in the county where the property is located not sooner than 12 hours after service upon the tenant and no later than 48 hours after such service.

(c) The complaint for expedited eviction shall allege and the landlord or real estate broker shall prove the following at the hearing:

(1) The vacation rental is for a term of 30 days or less.

(2) The tenant entered into and accepted a vacation rental agreement that conforms to the provisions of this Chapter.

(3) The tenant committed one or more of the acts listed in G.S. 42A-23(a) as grounds for eviction.

(4) The landlord or real estate broker has given notice to the tenant to vacate as a result of the breach as provided in subsection (a) of this section.

The rules of evidence shall not apply in an expedited eviction proceeding, and the court shall allow any reasonably reliable and material statements, documents, or other exhibits to be admitted as evidence. The provisions of G.S. 7A-218, 7A-219, and 7A-220, except any provisions regarding amount in controversy, shall apply to an expedited eviction proceeding held before the magistrate. These provisions shall not be construed to broaden the scope of an expedited eviction proceeding to issues other than the right to possession.

(d) If the court finds for the landlord or real estate broker, the court shall immediately enter a written order granting the landlord or real estate broker possession and stating the time when the tenant shall vacate the property. In no case shall this time be less than 2 hours or more than 8 hours after service of the order on the tenant. The court's order shall be served on the tenant at the hearing. If the tenant does not appear at the hearing or leaves before the order is served, the order

shall be served by delivering the order to the tenant or by posting the order on the front door of the property by any sworn law enforcement officer. The officer, upon service, shall file a return therefor.

If the court finds for the landlord or real estate broker, the court shall determine the amount of the appeal bond that the tenant shall be required to post should the tenant seek to appeal the court order. The amount of the bond shall be an estimate of the rent that will become due while the tenant is prosecuting the appeal and reasonable damages that the landlord may suffer, including damage to property and damages arising from the inability of the landlord or real estate broker to honor other vacation rental agreements due to the tenant's possession of the property.

"§ 42A-25. Appeal.

A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d) to district court for a trial de novo. A tenant may petition the district court to stay the eviction order and shall post a cash or secured bond with the court in the amount determined by the court pursuant to G.S. 42A-24(d).

"§ 42A-26. Violation of court order.

If a tenant fails to remove personal property from a residential property subject to a vacation rental after the court has entered an order of eviction, the landlord or real estate broker shall have the same rights as provided in G.S. 42-36.2(b) as if the sheriff had not removed the tenant's property. The failure of a tenant or the guest of a tenant to vacate a residential property in accordance with a court order issued pursuant to G.S. 42A-24(d) shall constitute a criminal trespass under G.S. 14-159.13.

"§ 42A-27. Penalties for abuse.

A landlord or real estate broker shall undertake to evict a tenant pursuant to an expedited eviction proceeding only when he or she has a good faith belief that grounds for eviction exists under the provisions of this Chapter. Otherwise, the landlord or real estate broker shall be guilty of an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor.

"ARTICLE 5.

"Landlord and Tenant Duties.

"§ 42A-31. Landlord to provide fit premises.

A landlord of a residential property used for a vacation rental shall:

(1) Comply with all current applicable building and housing codes.

(2) Make all repairs and do whatever is reasonably necessary to put and keep the property in a fit and habitable condition.

(3) Keep all common areas of the property in safe condition.

(4) Maintain in good and safe working order and reasonably and promptly repair all electrical, plumbing, sanitary, heating, ventilating, and other facilities and major appliances supplied by him or her upon written notification from the tenant that repairs are needed.

(5) Provide operable smoke detectors. The landlord shall replace or repair the smoke detectors if the landlord is notified by the tenant in writing that replacement or repair is needed. The landlord shall

annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"§ 42A-32. Tenant to maintain dwelling unit.

The tenant of a residential property used for a vacation rental shall:

(1) Keep that part of the property which he or she occupies and uses as clean and safe as the conditions of the property permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the property that he or she uses.

(2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner.

(3) Keep all plumbing fixtures in the property or used by the tenant as clean as their condition permits.

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the property or render inoperable the smoke detector provided by the landlord or knowingly permit any person to do so.

(5) Comply with all obligations imposed upon the tenant by current applicable building and housing codes.

(6) Be responsible for all damage, defacement, or removal of any property inside the property that is in his or her exclusive control unless the damage, defacement, or removal was due to ordinary wear and tear, acts of the landlord or his or her agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.

(7) Notify the landlord of the need for replacement of or repairs to a smoke detector. The landlord shall annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or the landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"ARTICLE 6.

"General Provisions.

"§ 42A-36. Mandatory evacuations.

If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1 of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant in possession of the property shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the prorated

rent for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated him or her for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total rent charged for the vacation rental to the tenant."

Section 2. G.S. 42-40(2) reads as rewritten:

"(2) "Premises" means a dwelling unit, including mobile homes or mobile home spaces, and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities normally held out for the use of residential ~~tenants who are using the dwelling unit as their primary residence.~~ tenants."

Section 3. G.S. 42-39 is amended by adding a new subsection to read:

"(a1) The provisions of this Article shall not apply to vacation rentals entered into under Chapter 42A of the General Statutes."

Section 4. This act becomes effective January 1, 2000, and applies to rental agreements entered into on or after that date.

SENATE BILL 974:
Vacation Rental Act

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Soles
Date:	June 29, 1999	**Summary by:**	Walker Reagan Esther Manheimer Committee Counsel
Version:	Committee Substitute (Second Edition)		

SUMMARY: The Proposed Committee Substitute for Senate Bill 974 would create the Vacation Rental Property Act to provide statutory law to govern short-term or vacation rental situations to include special notice requirements in a vacation rental agreement, to define how funds collected in advance for vacation rentals are to be held and applied, to provide for an expedited eviction process for a vacation renter who illegally holds over, to create the duties of landlord and tenants in vacation rental situations, and to define how vacation rentals are affected by mandatory evacuations.

CURRENT LAW: Current law in this area is governed primarily by common law and general contract law. Statutes applicable to realtors and the rules of the Real Estate Licensing Board govern realtors involved in vacation rentals. Because of a recent Supreme Court case there is confusion about how all these common laws and statutory laws fit together.

BILL ANALYSIS: Article 1 of the new act sets out the applicability of the bill and the relevant definitions. This Article makes the Act applicable to landlords and their brokers who rent residential property to tenants for short-term leases of 90 days or less for vacation or recreation purposes when the tenant has another permanent residence. Excluded from coverage by the Act are hotels and motels regulated under Chapter 72, temporary rentals for business or employment purposes, and rentals for nominal consideration.

Article 2 requires that all vacation rentals be by a vacation rental agreement. This type of rental agreement must detail how funds deposited are held and applied, what charges are nonrefundable, how the expedited eviction procedures work, and a description of the landlord and tenant's obligations under the law. Failure by the real estate broker to get a valid vacation rental agreement executed constitutes an unfair and deceptive trade practice and makes the expedited eviction process unenforceable.

Article 3 sets out how money paid in advance by tenants is to be handled by the landlord or realtor. This Article requires that funds be placed in a trust account in a North Carolina bank. This Article permits up to 50% of the total rent to be disbursed prior to occupancy. The remainder of the advance funds are to be held until occupancy, the tenant breaches, or the money is refunded. The landlord must give the tenant the name and address of the bank holding the deposits and an accounting of the funds when requested. Security deposits are to be governed by the Residential Tenant Security Deposit Act and may be applied to physical damage to the property, unpaid rent, or unpaid bills incurred by the tenant but charged to the

landlord. Under this Article, if the landlord or real estate broker cannot provide the property in a fit and habitable condition or provide a reasonably comparable substitute property, the tenant must be refunded all payments except administrative fees and those monies collected from tenants and obligated to a third party (e.g. deep sea fishing). This Article also provides that if the property is sold, any vacation rental agreements entered into by the landlord for rental periods within 180 days of recording must be honored by the new buyer. The seller is required to give the buyer notice that the property is subject to a vacation rental agreement.

Article 4 sets forth the procedures for an expedited eviction of a tenant that holds over beyond the term of the tenant's rental, fails to pay the rent, materially breaches the agreement, or obtains the property by fraud. This process shall apply where the rental was for a period of 30 days or less. Upon four hours advance notice to leave the premise, the landlord may initiate an expedited eviction process. This matter is to be heard before the clerk or superior court or a magistrate no less than 12 hours or more than 48 hours after service of the summons and complaint on the tenant or posting on the property. If the clerk finds that the tenant is in violation of the vacation rental agreement the clerk shall order the tenant to vacate within no less than 2 hours or more than 8 hours. A copy of the order to vacate the premises must be served on the tenant or posted on the property by a law enforcement officer. The tenant may appeal the clerk's order by seeking a stay upon posting a bond. A landlord or real estate broker who abuses this expedited eviction process shall be guilty of a Class 1 misdemeanor and subject to a claim for unfair and deceptive trade practices.

Article 5 establishes the duties of landlords and tenants in vacation rental situations. This provision changes the common law and reverses the recent NC Supreme Court case of Conley v. Ingram, ___NC___ (1999) which held that the landlord owed no duty to the tenant to insure the fitness or habitability of the premises. This Article is similar to the duties and responsibilities of landlords and tenants set forth in the Residential Rental Agreement Act. The landlord must keep the property in a fit and habitable condition, repair and maintain the utilities and major appliances, and provide and maintain smoke detectors. The tenant keep the premises clean, dispose of all trash and garbage, not destroy or deface the premises, notify the landlord of needed repairs, and notify the landlord if the smoke detector does not work.

Article 6 provides that in the event of a mandatory evacuation, if the tenant vacates the premises the tenant will be entitled to a prorated refund of the rent unless the tenant has obtained insurance to cover the risk, or refused coverage when offered by the landlord prior to the tenancy.

Sections 2 and 3 of the bill amend the Residential Rental Agreements Act to expand the definition of "premises" so as to include all rentals not covered by the Vacation Rental Act.

EFFECTIVE DATE: The act becomes effective January 1, 2000 and applies to vacation rental agreements entered into on or after that date.

VISITOR REGISTRATION SHEET

Judiciary III
Name of Committee

June 29, 1994 7:30
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Tom Keith	DA - 21st Dist
John Kennedy	CSC - Wake Co.
David Kirkman	AG
Robert Rader	Wake Co. District Ct.
Eugene Hafer	Public

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 29, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 974 Vacation Rental Act
Sponsor: Sen. Soles

SB 292 Superior Court Criminal Case Docketing
Sponsor: Sen. Ballance

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 29, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, June 29, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, Pope, Saunders, and Tallent. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

SB 974 Vacation Rental Act. The committee resumed its discussion of this bill from the previous meeting. Rep. Pope was recognized to send forth an amendment. A copy of the amendment is attached for the record. Rep. Pope moved for adoption of the amendment, motion passed. Rep. Culpepper was recognized to send forth a technical amendment. A copy of the amendment is attached for the record. Rep. Culpepper moved for adoption of the amendment, motion carried. Rep. Culpepper sent forth another amendment dealing with utilities, he moved for adoption of the amendment. Motion passed. Rep. Culpepper was recognized for a final amendment with regard to third party refunds. He moved for adoption of the amendment and the motion passed. Stephanie Mansur, representing the North Carolina Association of Realtors, voiced the organization's support of the bill. Rep. Culpepper moved that amendments be in enrolled into a new House committee substitute and that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. Motion passed.

SB 292 Superior Court Criminal Case Docketing. Sen. Balance, bill sponsor, was recognized to explain the bill. Rep. Thomas moved that the proposed committee substitute be adopted for the purposes of discussion. Motion carried. Sen. Balance noted that the proposed committee substitute substantially modified the Senate version of the bill. Rex Gore, President of the Conference of DAs, commented that this bill presented a way to efficiently manage the court system. Dick Taylor of the Trial Lawyers Association spoke in support of this bill, and shared his belief that the bill promoted fairness. Following questions from the committee, Rep. Thomas was recognized to send forth an amendment. Rep. Thomas then moved for adoption of the amendment, motion passed. Rep. Thomas moved that amendment be enrolled into a new House committee substitute and that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute bill. Motion passed.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 6/30

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 974 A BILL TO BE ENTITLED AN ACT REGULATING THE RENTAL OF REDIENTIAL PROPERTY FOR VACATION, LEISURE, OR RECREATIONAL PURPOSES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. _____ DATE _____

S. B. No. 974 Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Pope

Sen.)

moves to amend the bill on page 5, line 40

( ) WHICH CHANGES THE TITLE

by deleting the words "the transfer of the property" and substituting the words "entering into the contract of sale";

and on page 5, line 42, by deleting the word "receiving" and substituting the words "transfer of the property";

and on page 5, line 44 by adding after the word "grantee" the words "or the grantee's agent"

SIGNED Pope

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 974

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

S974-ASK-001 Page 1 of __

Date_____,1999

Comm. Sub. [Yes]
Amends Title [ ]
Second Edition

Rep. Culpepper

moves to amend the bill on page 7, line 21, by inserting the following at the end of the line:

"To the extent that the provisions of this Article are in conflict with the Rules of Civil Procedure, Chapter 1A of the General Statutes, with respect to the commencement of an action or service of process, this Article controls.";

and on page 10, between lines 18-19, by adding the following new section:

"Section 4. G.S. 7A-272 reads as rewritten:

'**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;
(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;
(3) When authorized by the chief district judge, to take depositions and examinations before trial;
(4) To issue subpoenas and capiases valid throughout the county;
(5) To take affidavits for the verification of pleadings;
(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 974

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

S974-ASK-001 Page 2 of __

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
(8) To take acknowledgments of instruments, as provided in G.S. 47-1;
(9) To perform the marriage ceremony, as provided in G.S. 51-1;
(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.
(14) If the office the clerk of superior court is closed, to accept the filing of a complaint and to issue a summons in cases for expedited eviction proceedings under Article 4 of Chapter 42A of the General Statutes.'";

and by renumbering the subsequent sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
SENATE BILL 974

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

S974-ASG-001 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title [NO]
SECOND EDITION

Representative [redacted]

moves to amend the bill on page 5, line 18,
by rewriting the line to read:
"any long distance or per call telephone charges and cable television charges that are the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd Ed.

H. B. No. _____ DATE _____

S. B. No. 974 Amendment No. _____
(to be filled in by Principal Clerk)

Proposed Comm. Sub.
COMMITTEE SUBSTITUTE _____

(Rep.) Culpepper
Sen.)

1 moves to amend the bill on page 4-5, line 43-2
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the sentence:
4 "The landlord and real estate broker
5 shall not be required to refund any
6 payments collected from the tenant and
7 obligated or disbursed to a third party
8 equaling the actual costs of services, goods,
9 or benefits to be rendered to the
10 tenant by the third party."
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 974*
Commerce Committee Substitute Adopted 4/27/99
Proposed Committee Substitute S974-PCS8619-SG

Short Title: Vacation Rental Act. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR VACATION, LEISURE, OR RECREATIONAL PURPOSES, AND CLARIFYING THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS OF RESIDENTIAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 42A.

"Vacation Rental Act.

"ARTICLE 1.

"Vacation Rentals.

"**§ 42A-1. Title.**

This Chapter shall be known as the North Carolina Vacation Rental Act.

"**§ 42A-2. Purpose and scope of act.**

The General Assembly finds that the growth of the tourism industry in North Carolina has led to a greatly expanded market of privately owned residences that are rented to tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by the owners of these residences or licensed real estate brokers acting on their behalf present unique situations not normally found in the rental of primary residences for long terms, and therefore make it necessary for the General Assembly

to enact laws regulating the competing interests of landlords, real estate brokers, and tenants.

"**§ 42A-3. Application; exemptions.**

(a) The provisions of this Chapter shall apply to any person, partnership, corporation, limited liability company, association, or other business entity who acts as a landlord or real estate broker engaged in the rental or management of residential property for vacation rental as defined in this Chapter.

(b) The provisions of this Chapter shall not apply to:

(1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes.

(2) Rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes.

(3) Rentals to persons having no other place of primary residence.

(4) Rentals for which no more than nominal consideration is given.

"**§ 42A-4. Definitions.**

The following definitions apply in this Chapter:

(1) Real estate broker. -- A real estate broker as defined in G.S. 93A-2(a).

(2) Residential property. -- An apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period.

(3) Vacation rental. -- The rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return.

(4) Vacation rental agreement. -- A written agreement between a landlord or his or her real estate broker and a tenant in which the tenant agrees to rent residential property belonging to the landlord for a vacation rental.

"ARTICLE 2.

"Vacation Rental Agreements.

"**§ 42A-10. Written agreement required.**

(a) A landlord or real estate broker and tenant shall execute a vacation rental agreement for all vacation rentals subject to the provisions of this Chapter. No vacation rental agreement shall be valid and enforceable unless the tenant has accepted the agreement as evidenced by one of the following:

(1) The tenant's signature on the agreement.

(2) The tenant's payment of any monies to the landlord or real estate broker after the tenant's receipt of the agreement.

(3) The tenant's taking possession of the property after the tenant's receipt of the agreement.

(b) Any real estate broker who executes a vacation rental agreement that does not conform to the provisions of this Chapter or fails to execute a vacation rental agreement shall be guilty of an unfair trade practice in violation of G.S. 75-1.1, and shall be prohibited from commencing an expedited eviction proceeding as provided in Article 4 of this Chapter.

"**§ 42A-11. Vacation rental agreements.**

(a) A vacation rental agreement executed under this Chapter shall contain the following notice on its face which shall be set forth in a clear and conspicuous manner that distinguishes it from other provisions of the agreement: 'THIS IS A VACATION RENTAL AGREEMENT UNDER THE NORTH CAROLINA VACATION RENTAL ACT. THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE DEFINED BY LAW AND INCLUDE UNIQUE PROVISIONS PERMITTING THE DISBURSEMENT OF RENT PRIOR TO TENANCY AND EXPEDITED EVICTION OF TENANTS. YOUR SIGNATURE ON THIS AGREEMENT, OR PAYMENT OF MONEY OR TAKING POSSESSION OF THE PROPERTY AFTER RECEIPT OF THE AGREEMENT, IS EVIDENCE OF YOUR ACCEPTANCE OF THE AGREEMENT AND YOUR INTENT TO USE THIS PROPERTY FOR A VACATION RENTAL.'

(b) The vacation rental agreement shall contain provisions separate from the requirements of subsection (a) of this section which shall describe the following as permitted or required by this Chapter:

(1) The manner in which funds shall be received, deposited, and disbursed in advance of the tenant's occupancy of the property.
(2) Any processing fees permitted under G.S. 42A-17(c).
(3) The rights and obligations of the landlord and tenant under G.S. 42A-17(b).
(4) The applicability of expedited eviction procedures.
(5) The rights and obligations of the landlord or real estate broker and the tenant upon the transfer of the property.
(6) The rights and obligations of the landlord or real estate broker and the tenant under G.S. 42A-36.
(7) Any other obligations of the landlord and tenant.

"ARTICLE 3.

"Handling and Accounting of Funds.

"**§ 42A-15. Trust account uses.**

A landlord or real estate broker may require a tenant to pay all or part of any required rent, security deposit, or other fees permitted by law in advance of the commencement of a tenancy under this Chapter if these payments are expressly authorized in the vacation rental agreement. If the tenant is required to make any advance payments, other than a security deposit, whether the payment is denominated as rent or otherwise, the landlord or real estate broker shall deposit these payments in a trust account in an insured bank or savings and loan association in North Carolina no later than three banking days after the receipt of the these payments. These payments deposited in a trust account shall not earn interest unless

the landlord and tenant agree in the vacation rental agreement that the payments may be deposited in an interest-bearing account. The landlord and tenant shall also provide in the agreement to whom the accrued interest shall be disbursed.

"§ 42A-16. Advance payments uses.

(a) A landlord or real estate broker shall not disburse prior to the occupancy of the property by the tenant an amount greater than fifty percent (50%) of the total rent except as permitted pursuant to this subsection. A landlord or real estate broker may disburse prior to the occupancy of the property by the tenant any fees owed to third parties to pay for goods, services, or benefits procured by the landlord or real estate broker for the benefit of the tenant, including administrative fees permitted by G.S. 42A-17(c), if the disbursement is expressly authorized in the vacation rental agreement. The funds remaining after any disbursment permitted under this subsection shall remain in the trust account and may not be disbursed until the occurrence of one of the following:

(1) The commencement of the tenancy, at which time the remaining funds may be disbursed in accordance with the terms of the agreement.

(2) The tenant commits a material breach, at which time the landlord may retain an amount sufficient to defray the actual damages suffered by the landlord as a result of the breach.

(3) The landlord or real estate broker refunds the money to the tenant.

(4) The funds in the trust account are transferred in accordance with G.S. 42A-19(b) upon the termination of the landlord's interest in the property.

(b) Funds collected for sales or occupancy taxes and tenant security deposits shall not be disbursed from the trust account prior to termination of the tenancy or material breach of the agreement by the tenant, except as a refund to the tenant.

(c) The tenant's execution of a vacation rental agreement in which he or she agrees to the advance disbursement of payments shall not constitute a waiver or loss of any of the tenant's rights to reimbursement of such payments if the tenant is lawfully entitled to reimbursement.

"§ 42A-17. Accounting; reimbursement.

(a) A vacation rental agreement shall identify the name and address of the bank or savings and loan association in which the tenant's security deposit and other advance payments are held in a trust account, and the landlord and real estate broker shall provide the tenant with an accounting of such deposit and payments if the tenant makes a reasonable request for an accounting prior to the tenant's occupancy of the property.

(b) Except as otherwise provided in this subsection, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant.

(c) A vacation rental agreement may include administrative fees, the amounts of which shall be provided in the agreement, reasonably calculated to cover the costs of processing the tenant's reservation, transfer, or cancellation of a vacation rental.

"**§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.**

(a) Except as may otherwise be provided in this Chapter, all funds collected from a tenant and not identified in the vacation rental agreement as occupancy or sales taxes, fees, or rent payments shall be considered a tenant security deposit and shall be subject to the provisions of the Residential Tenant Security Deposit Act, as codified in Article 6 of Chapter 42 of the General Statutes. Funds collected as a tenant security deposit in connection with a vacation rental shall be deposited into a trust account as required by G.S. 42-50. The landlord or real estate broker shall not have the option of obtaining a bond in lieu of maintaining security deposit funds in a trust account. In addition to the permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under this Chapter, deduct from any tenant security deposit the amount of any long distance or per call telephone charges and cable television charges that are the obligation of the tenant under the vacation rental agreement and are left unpaid by the tenant at the conclusion of the tenancy. The landlord or real estate broker shall apply, account for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy.

(b) A vacation rental agreement shall not contain language compelling or permitting the automatic forfeiture of all or part of a tenant security deposit in case of breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation rental agreement shall provide that a tenant security deposit may be applied to actual damages caused by the tenant as permitted under Article 6 of Chapter 42 of the General Statutes.

"**§ 42A-19. Transfer of property subject to a vacation rental agreement.**

(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take his or her title subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a refund of any payments made by him or her. Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after entering into the contract of sale the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. Not later than 10 days after transfer of the property each tenant's name and address and copies of each vacation rental agreement from the landlord, the grantee or the grantee's agent shall:

(1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.

(2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.

(3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

(b) Except as otherwise provided in this subsection, upon termination of the landlord's interest in the residential property subject to a vacation rental agreement, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the transferee's name and address. For vacation rentals that end more than 180 days after the recording of the interest of the landlord's successor in interest, unless the landlord's successor in interest has agreed in writing to honor the vacation rental agreement, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the tenant. Compliance with this subsection shall relieve the landlord or real estate broker of further liability with respect to any payment of rent or fees. Funds held as a security deposit shall be disbursed in accordance with G.S. 42A-18.

(c) If, prior to the tenant's occupancy of the property, the landlord's interest in the property is involuntarily transferred to another, the landlord shall refund to the tenant within 60 days after the transfer any payments made by the tenant.

(d) The failure of a landlord to comply with the provisions of this section shall constitute an unfair trade practice in violation of G.S. 75-1.1. A landlord who complies with the requirements of this section shall have no further obligations to the tenant.

"ARTICLE 4.

"Expedited Eviction Proceedings.

"§ 42A-23. Grounds for eviction.

(a) Any tenant who leases residential property subject to a vacation rental agreement under this Chapter for 30 days or less may be evicted and removed from the property in an expedited eviction proceeding brought by the landlord, or real estate broker as agent for the landlord, as provided in this Article if the tenant does one of the following:

(1) Holds over possession after his or her tenancy has expired.

(2) Has committed a material breach of the terms of the vacation rental agreement that, according to the terms of the agreement, results in the termination of his or her tenancy.

(3) Fails to pay rent as required by the agreement.

(4) Has obtained possession of the property by fraud or misrepresentation.

(b) Only the right to possession shall be relevant in an expedited eviction proceeding. All other issues related to the rental of the residential property shall be presented in a separate civil action.

"**§ 42A-24. Expedited eviction.**

(a) Before commencing an expedited eviction proceeding, the landlord or real estate broker shall give the tenant at least four hours' notice, either orally or in writing, to quit the premises. If reasonable efforts to personally give oral or written notice have failed, written notice may be given by posting the notice on the front door of the property.

(b) An expedited eviction proceeding shall commence with the filing of a complaint and issuance of summons in the county where the property is located. If the office of the clerk of superior court is closed, the complaint shall be filed with, and the summons issued by, a magistrate. The service of the summons and complaint for expedited eviction shall be made by a sworn law enforcement officer on the tenant personally or by posting a copy of the summons and complaint on the front door of the property. The officer, upon service, shall promptly file a return therefor. A hearing on the expedited eviction shall be held before a magistrate in the county where the property is located not sooner than 12 hours after service upon the tenant and no later than 48 hours after such service. To the extent that the provisions of this Article are in conflict with the Rules of Civil Procedure, Chapter 1A of the General Statutes, with respect to the commencement of an action or service of process, this Article controls.

(c) The complaint for expedited eviction shall allege and the landlord or real estate broker shall prove the following at the hearing:

(1) The vacation rental is for a term of 30 days or less.

(2) The tenant entered into and accepted a vacation rental agreement that conforms to the provisions of this Chapter.

(3) The tenant committed one or more of the acts listed in G.S. 42A-23(a) as grounds for eviction.

(4) The landlord or real estate broker has given notice to the tenant to vacate as a result of the breach as provided in subsection (a) of this section.

The rules of evidence shall not apply in an expedited eviction proceeding, and the court shall allow any reasonably reliable and material statements, documents, or other exhibits to be admitted as evidence. The provisions of G.S. 7A-218, 7A-219, and 7A-220, except any provisions regarding amount in controversy, shall apply to an expedited eviction proceeding held before the magistrate. These provisions shall not be construed to broaden the scope of an expedited eviction proceeding to issues other than the right to possession.

(d) If the court finds for the landlord or real estate broker, the court shall immediately enter a written order granting the landlord or real estate broker possession and stating the time when the tenant shall vacate the property. In no case

shall this time be less than 2 hours or more than 8 hours after service of the order on the tenant. The court's order shall be served on the tenant at the hearing. If the tenant does not appear at the hearing or leaves before the order is served, the order shall be served by delivering the order to the tenant or by posting the order on the front door of the property by any sworn law enforcement officer. The officer, upon service, shall file a return therefor.

If the court finds for the landlord or real estate broker, the court shall determine the amount of the appeal bond that the tenant shall be required to post should the tenant seek to appeal the court order. The amount of the bond shall be an estimate of the rent that will become due while the tenant is prosecuting the appeal and reasonable damages that the landlord may suffer, including damage to property and damages arising from the inability of the landlord or real estate broker to honor other vacation rental agreements due to the tenant's possession of the property.

"**§ 42A-25. Appeal.**

A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d) to district court for a trial de novo. A tenant may petition the district court to stay the eviction order and shall post a cash or secured bond with the court in the amount determined by the court pursuant to G.S. 42A-24(d).

"**§ 42A-26. Violation of court order.**

If a tenant fails to remove personal property from a residential property subject to a vacation rental after the court has entered an order of eviction, the landlord or real estate broker shall have the same rights as provided in G.S. 42-36.2(b) as if the sheriff had not removed the tenant's property. The failure of a tenant or the guest of a tenant to vacate a residential property in accordance with a court order issued pursuant to G.S. 42A-24(d) shall constitute a criminal trespass under G.S. 14-159.13.

"**§ 42A-27. Penalties for abuse.**

A landlord or real estate broker shall undertake to evict a tenant pursuant to an expedited eviction proceeding only when he or she has a good faith belief that grounds for eviction exists under the provisions of this Chapter. Otherwise, the landlord or real estate broker shall be guilty of an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor.

"ARTICLE 5.

"Landlord and Tenant Duties.

"**§ 42A-31. Landlord to provide fit premises.**

A landlord of a residential property used for a vacation rental shall:

(1) Comply with all current applicable building and housing codes.

(2) Make all repairs and do whatever is reasonably necessary to put and keep the property in a fit and habitable condition.

(3) Keep all common areas of the property in safe condition.

(4) Maintain in good and safe working order and reasonably and promptly repair all electrical, plumbing, sanitary, heating, ventilating, and other facilities and major appliances supplied by him or her upon written notification from the tenant that repairs are needed.

(5) Provide operable smoke detectors. The landlord shall replace or repair the smoke detectors if the landlord is notified by the tenant in writing that replacement or repair is needed. The landlord shall annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"§ 42A-32. Tenant to maintain dwelling unit.

The tenant of a residential property used for a vacation rental shall:

(1) Keep that part of the property which he or she occupies and uses as clean and safe as the conditions of the property permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the property that he or she uses.

(2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner.

(3) Keep all plumbing fixtures in the property or used by the tenant as clean as their condition permits.

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the property or render inoperable the smoke detector provided by the landlord or knowingly permit any person to do so.

(5) Comply with all obligations imposed upon the tenant by current applicable building and housing codes.

(6) Be responsible for all damage, defacement, or removal of any property inside the property that is in his or her exclusive control unless the damage, defacement, or removal was due to ordinary wear and tear, acts of the landlord or his or her agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.

(7) Notify the landlord of the need for replacement of or repairs to a smoke detector. The landlord shall annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or the landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"ARTICLE 6.

"General Provisions.

"§ 42A-36. Mandatory evacuations.

If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1 of Chapter 166A of the General Statutes, order a mandatory evacuation of

an area that includes the residential property subject to a vacation rental, the tenant in possession of the property shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the prorated rent for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated him or her for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total rent charged for the vacation rental to the tenant."

Section 2. G.S. 42-40(2) reads as rewritten:

"(2) "Premises" means a dwelling unit, including mobile homes or mobile home spaces, and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities normally held out for the use of residential ~~tenants who are using the dwelling unit as their primary residence.~~ tenants."

Section 3. G.S. 42-39 is amended by adding a new subsection to read:

"(a1) The provisions of this Article shall not apply to vacation rentals entered into under Chapter 42A of the General Statutes."

Section 4. G.S. 7A-272 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;
(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;
(3) When authorized by the chief district judge, to take depositions and examinations before trial;
(4) To issue subpoenas and capiases valid throughout the county;
(5) To take affidavits for the verification of pleadings;
(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;
(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
(8) To take acknowledgments of instruments, as provided in G.S. 47-1;
(9) To perform the marriage ceremony, as provided in G.S. 51-1;
(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(14) If the office the clerk of superior court is closed, to accept the filing of a complaint and to issue a summons in cases for expedited eviction proceedings under Article 4 of Chapter 42A of the General Statutes."

Section 5. This act becomes effective January 1, 2000, and applies to rental agreements entered into on or after that date.

reported 6/29

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 292 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE CALENDARED PURSUANT TO ADMINISTRATIVE SETTINGS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 292 Amendment No. _____
Proposed Comm. Sub. (to be filled in by Principal Clerk)
COMMITTEE SUBSTITUTE _____

Rep.) Thomas
)
Sen.)

1 moves to amend the bill on page 3, line 10
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between the number "10"
4 and the word "days" the word "working"
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SIGNED Scott Thomas

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 292
Judiciary I Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/28/99

Short Title: Sup. Ct. Crim. Case Docketing. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE CALENDARED PURSUANT TO ADMINISTRATIVE SETTINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-49.4. Superior court criminal case docketing.**

(a) Criminal Docketing. -- Criminal cases in superior court shall be calendared by the district attorney at administrative settings as provided in this section. These settings shall be held by a Resident Superior Court Judge or any Superior Court Judge designated by a Resident Superior Court Judge.

(b) Administrative Settings. -- An administrative setting shall be calendared for each felony within 30 days of indictment or service thereof if required by law. At an administrative setting:

(1) The court shall determine the status of the defendant's representation by counsel;

(2) After hearing from the parties, the court shall set guidelines for the delivery of discovery and filing of motions;

(3) The district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the court may conduct a plea conference if supported by the interest of justice;

(4) The court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case; and

(5) The court may schedule more than one administrative setting if requested by the parties or if it is found to be otherwise necessary.

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting, the district attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date, unless after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the district attorney shall set another tentative trial date during the final administrative setting. The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.

(c) Venue for Administrative Settings. -- Venue for administrative settings may be in any county within the district when necessary to comply with the terms of the criminal case docketing plan. The presence of the defendant is only required for administrative settings held in the county where the case originated.

(d) Setting and Publishing of Trial Calendar. -- No less than 10 days before cases are calendared for trial, the district attorney shall publish the trial calendar. The trial calendar shall schedule the cases in the order in which the district attorney anticipates they will be called for trial, and should not contain cases that the district attorney does not reasonably expect to be called for trial. In counties in which multiple sessions of court are being held, the district attorney may publish no more than one trial calendar per session of court.

The district attorney shall make a reasonable effort to notify each defendant of any change in the order in which cases will be called by the Thursday prior to the session of court for which the defendant's case is calendared. These efforts shall include posting at the courthouse the anticipated order in which cases are to be called for trial.

(e) Order of Trial. -- The district attorney, after calling the calendar, shall announce to the court the order in which the district attorney intends to call for trial or other disposition the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before his case have been disposed of or delayed with the approval of the presiding judge or by consent of the State and the defendant. A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding judge or resident superior court judge for good cause shown. The district attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that session of court.

(f) No provision in this statute is intended to deprive any victim of the rights granted under Article I, Section 37 of the State Constitution and Article 46 of Chapter 15A of the General Statutes."

Section 2. G.S. 7A-49.3 is repealed.

Section 3. G.S. 7A-61 reads as rewritten:

"**§ 7A-61. Duties of district attorney.**

The district attorney shall prepare the trial dockets, prosecute in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district, advise the officers of justice in his district, and perform such duties related to appeals to the Appellate Division from his district as the Attorney General may require. Effective January 1, 1971, the district attorney shall also represent the State in juvenile cases in which the juvenile is represented by an attorney. Each district attorney shall devote his full time to the duties of his office and shall not engage in the private practice of law."

Section 4. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 292
Judiciary I Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/28/99
Proposed House Committee Substitute S292-PCSRG-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Sup. Ct. Crim. Case Docketing. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE CALENDARED PURSUANT TO ADMINISTRATIVE SETTINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-49.4. Superior court criminal case docketing.**

(a) Criminal Docketing. -- Criminal cases in superior court shall be calendared by the district attorney at administrative settings according to a criminal case docketing plan developed by the district attorney for each superior court district in consultation with the superior court judges residing in that district and after opportunity for comment by members of the local bar. Each criminal case docketing plan shall, at a minimum, comply with the provisions of this section, but may contain additional provisions not inconsistent with this section.

(b) Administrative Settings. -- An administrative setting shall be calendared for each felony within 60 days of indictment or service of notice of indictment if required by law, or at the next regularly scheduled session of superior court if later than

60 days from indictment or service if required. At an administrative setting:

(1) The court shall determine the status of the defendant's representation by counsel;

(2) After hearing from the parties, the court shall set deadlines for the delivery of discovery, arraignment if necessary, and filing of motions;

(3) If the district attorney has made a determination regarding a plea arrangement, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the court may conduct a plea conference if supported by the interest of justice;

(4) The court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case; and

(5) The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner.

Whenever practical, administrative settings shall be held by a superior court judge residing within the district, but may otherwise be held by any superior court judge.

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting the district attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date, unless after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the district attorney shall set another tentative trial date during the final administrative setting. The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.

Nothing in this section precludes the disposition of a criminal case by plea, deferred prosecution, or dismissal prior to an administrative setting.

(c) Definite Trial Date. -- When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a superior court judge designated by the

senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant.

(d) Venue for Administrative Settings. -- Venue for administrative settings may be in any county within the district when necessary to comply with the terms of the criminal case docketing plan. The presence of the defendant is only required for administrative settings held in the county where the case originated.

(e) Setting and Publishing of Trial Calendar. -- No less than 10 days before cases are calendared for trial, the district attorney shall publish the trial calendar. The trial calendar shall schedule the cases in the order in which the district attorney anticipates they will be called for trial, and should not contain cases that the district attorney does not reasonably expect to be called for trial. In counties in which multiple sessions of court are being held, the district attorney may publish a trial calendar for each session of court.

(f) Order of Trial. -- The district attorney, after calling the calendar and determining cases for pleas and other disposition, shall announce to the court the order in which the district attorney intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before the defendant's case have been disposed of or delayed with the approval of the presiding judge or by consent of the State and the defendant. A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding judge or resident superior court judge for good cause shown. The district attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that session of court.

(g) Nothing in this section shall be construed to deprive any victim of the rights granted under Article I, Section 37 of the North Carolina Constitution and Article 46 of Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed to affect the authority of the court in the call of cases calendared for trial."

Section 2. G.S. 7A-49.3 is repealed.

Section 3. G.S. 7A-61 reads as rewritten:

"**§ 7A-61. Duties of district attorney.**

The district attorney shall prepare the trial dockets, prosecute in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district, advise the officers of justice in his district, and perform such duties related to appeals to the Appellate Division from his district as the Attorney General may require. Effective January 1, 1971, the district attorney shall also represent the State in juvenile cases in which the juvenile is represented by an attorney. Each district attorney shall devote his full time to the duties of his office and shall not engage in the private practice of law."

Section 4. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 292
Judiciary I Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/28/99
Proposed House Committee Substitute S292-PCS1769-RG

Short Title: Sup. Ct. Crim. Case Docketing. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE CALENDARED PURSUANT TO ADMINISTRATIVE SETTINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-49.4. Superior court criminal case docketing.**

(a) Criminal Docketing. -- Criminal cases in superior court shall be calendared by the district attorney at administrative settings according to a criminal case docketing plan developed by the district attorney for each superior court district in consultation with the superior court judges residing in that district and after opportunity for comment by members of the local bar. Each criminal case docketing plan shall, at a minimum, comply with the provisions of this section, but may contain additional provisions not inconsistent with this section.

(b) Administrative Settings. -- An administrative setting shall be calendared for each felony within 60 days of indictment or service of notice of indictment if required by law, or at the next regularly scheduled session of superior court if later than 60 days from indictment or service if required. At an administrative setting:

(1) The court shall determine the status of the defendant's representation by counsel;

(2) After hearing from the parties, the court shall set deadlines for the delivery of discovery, arraignment if necessary, and filing of motions;

(3) If the district attorney has made a determination regarding a plea arrangement, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the court may conduct a plea conference if supported by the interest of justice;

(4) The court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case; and

(5) The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner.

Whenever practical, administrative settings shall be held by a superior court judge residing within the district, but may otherwise be held by any superior court judge.

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting, the district attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date unless, after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the district attorney shall set another tentative trial date during the final administrative setting. The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.

Nothing in this section precludes the disposition of a criminal case by plea, deferred prosecution, or dismissal prior to an administrative setting.

(c) Definite Trial Date. -- When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a superior court judge designated by the senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant.

(d) Venue for Administrative Settings. -- Venue for administrative settings may be in any county within the district when necessary to comply with the terms of the criminal case docketing plan. The presence of the defendant is only required for administrative settings held in the county where the case originated.

(e) Setting and Publishing of Trial Calendar. -- No less than 10 working days before cases are calendared for trial, the district attorney shall publish the trial calendar. The trial calendar shall schedule the cases in the order in which the district attorney anticipates they will be called for trial and should not contain cases that the district attorney does not reasonably expect to be called for trial. In counties in which multiple sessions of court are being held, the district attorney may publish a trial calendar for each session of court.

(f) Order of Trial. -- The district attorney, after calling the calendar and determining cases for pleas and other disposition, shall announce to the court the order in which the district attorney intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before the defendant's case have been disposed of or delayed with the approval of the presiding judge or by consent of the State and the defendant. A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding judge or resident superior court judge for good cause shown. The district attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that session of court.

(g) Nothing in this section shall be construed to deprive any victim of the rights granted under Article I, Section 37 of the North Carolina Constitution and Article 46 of Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed to affect the authority of the court in the call of cases calendared for trial."

Section 2. G.S. 7A-49.3 is repealed.

Section 3. G.S. 7A-61 reads as rewritten:

"**§ 7A-61. Duties of district attorney.**

The district attorney shall prepare the trial dockets, prosecute in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district, advise the officers of justice in his district, and perform such duties related to appeals to the Appellate Division from his district as the Attorney General may require. Effective January 1, 1971, the district attorney shall also represent the State in juvenile cases in which the juvenile is represented by an attorney. Each district attorney shall devote his full time to the duties of his office and shall not engage in the private practice of law."

Section 4. This act becomes effective January 1, 2000.

SENATE BILL 292:
Sup. Ct. Crim. Case Docketing

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Senator Ballance
		Summary by:	Tim Hovis Committee Counsel
Date:	June 29, 1999		
Version:	Proposed Committee Substitute		

SUMMARY: This bill requires all superior court criminal cases to be calendared during an administrative setting. The act becomes effective January 1, 2000.

BILL ANALYSIS:

Section 1. Section 1 of the bill sets forth the requirements of an administrative hearing, establishes where the hearing should take place, provides the criteria for setting and publishing a trial calendar, and sets forth the order in which cases shall be called for trial.

A) Administrative Setting: An administrative setting must be set within 60 days of indictment or at the next regularly scheduled session of court if required. The following must occur during the administrative setting:

1. The status of the defendant's representation by counsel must be determined.
2. Court must set discovery deadlines.
3. District attorney must inform the defendant of any plea arrangement and the terms of the arrangement.
4. Court may hear pretrial motions.
5. Court may schedule subsequent administrative settings, if necessary.

The district attorney is required to propose a trial date upon the conclusion of the final administrative setting. The court shall set that date as the tentative trial date, unless the interests of justice require a different date. If justice so requires, the district attorney shall set another tentative trial date. The trial should not occur less than 30 days following the final administrative setting. If a case is not scheduled for trial within 120 days of indictment, then, upon motion of the defendant, the court may hold a hearing for the purpose of establishing a trial date.

B) Venue:

1. Administrative setting may be held in any county within the district.
2. The defendant's presence is only required for an administrative setting held in the county where the case originated.

D) Setting and Publishing of the Trial Calendar:

1. District attorney must publish the trial calendar at least 10 days before the cases are calendared for trial.

2. The calendar may not contain cases that the district attorney does not reasonably expect to call for trial.
3. In counties with multiple sessions of court, the district attorney may publish only one trial calendar per session of court.

E) Order of Trial:

1. After calling the calendar, the district attorney must announce the order in which the district attorney intends to call the cases for trial.
2. The court must approve any deviations from the announced order, if the defendant whose case is called objects to the deviation.
3. A case may be continued with the consent of the State and the defendant or upon order of the presiding judge for good cause shown.

Section 2. Section 2 repeals G.S. 7A-49.3 (See below.)

The statutory provision being repealed sets forth the current method of calendaring criminal cases in superior court. This method is being replaced by the administrative settings outlined in Senate Bill 292.

Section 3. Section 3 amends current law to require district attorneys to not only prosecute cases, but to prosecute them ***"in a timely manner."*** Under current law, the applicable statute requires the district attorney to prepare the trial dockets, prosecute in the name of the State all criminal actions and infractions requiring prosecution, advise the officers of justice in the district attorney's district, and perform duties related to appeals as the Attorney General may require.

Section 4. This act becomes effective on January 1, 2000.

§ 7A-49.3. Calendar for criminal trial sessions.

(a) At least one week before the beginning of any session of the superior court for the trial of criminal cases, the district attorney shall file with the clerk of superior court a calendar of the cases he intends to call for trial at that session. The calendar shall fix a day for the trial of each case listed thereon. The district attorney may place on the calendar for the first day of the session all cases which will require consideration by the grand jury without obligation to call such cases for trial on that day. No case on the calendar may be called for trial before the day fixed by the calendar except by consent or by order of the court. Any case docketed after the calendar has been filed with the clerk may be placed on the calendar at the discretion of the district attorney.

(a1) If he has not done so before the beginning of each session of superior court at which criminal cases are to be heard, the District Attorney, after calling the calendar and disposing of nonjury matters, including guilty pleas, if any such nonjury matters are to be disposed of prior to the calling of cases for trial, shall announce to the court the order in which he intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge, if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before his case have been disposed of or delayed with the approval of the presiding judge or by consent.

(b) All witnesses shall be subpoenaed to appear on the date listed for the trial of the case in which they are witnesses. Witnesses shall not be entitled to prove their attendance for any day or days prior to the day on which the case in which they are witnesses is set for trial, unless otherwise ordered by the presiding judge.

(c) Nothing in this section shall be construed to affect the authority of the court in the call of cases for trial.

This summary was contributed to by Ms. Jo McCants, Staff Attorney.

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

6/29/99 10am
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conference of D.A.s
Bill Kenerly	D.A., 19-C
Matt Osborne	AOC
John Kennedy	CSC- Wake Co.
Dirk Taylor	NCATL
Rick Bosse	NC DAs
Charles Cromer	NCATL
Jim Ramquist	NCSOS
David Kirkman	AG
Will Martin	NC Ass'n REALTORS
Anne Wine	NCJCDC
Jim Midgett	NCREC Appointee
Barbara Connery	Outer Banks Assn of Realtors
Kim Johnson	NCREC Appointee
J. Allen Holden	Pres. N.C. Vacation Rental Managers Ass & NCREC APPOINTEE

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
S.R. Buckley Rudd Sr	Mag Ind Rudd & Assoc
Tom Ross	Admin Office of Courts

AGENDA

HOUSE JUDICIARY IV COMMITTEE

July 1, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 1149 Prohibit Predatory Lending
Sponsor: Sen. Cooper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

July 1, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, July 1, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Earle, Jeffus, Justus, McMahan, Pope, Saunders, Tallent, and Cunningham. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

SB 1149 Prohibit Predatory Lending. The committee began the meeting by watching a video pertaining to the practice known as predatory lending. Following the video, Sen. Cooper, bill sponsor, was recognized to explain the bill. He stated that the goal of this legislation was to stop predatory lending in North Carolina, and he noted that this was an extremely technical bill. Among the supporters of this bill, Sen. Cooper listed the Attorney General, the North Carolina Bankers Association, North Carolina Financial Institutions, North Carolina Mortgage Association, North Carolina Credit Unions, North Carolina Mortgage Brokers, the NAACP, and the Coalition for Responsible Lending. Guy Rohling, representing Consumer Credit Association, was recognized for comments on the bill. Claudia Ormrod of Household Insurance Group defined single premium loans and credit life insurance for the committee. Rep. McMahan questioned the varying terms of credit life insurance. Ms. Ormrod noted that the five-year term is more affordable than insurance that covers the life of the loan. Rep. Tallent questioned what other states are prohibiting this practice. Sen. Cooper noted that if this bill passed, North Carolina would become the first state to prohibit predatory lending. Alan Hirsch of the Attorney General's office and Bill Hale of the Insurance Commission were available to answer questions from the committee. With questions and comments remaining, the Chairman adjourned the meeting to reconvene after session if possible. No vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 1149
Judiciary I Committee Substitute Adopted 6/16/99
Third Edition Engrossed 6/22/99

Short Title: Prohibit Predatory Lending. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A reads as rewritten:

"§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

(a) Notwithstanding any other provision of this ~~Chapter,~~ Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars ($10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;

(2) Where the principal amount is less than ten thousand dollars ($10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a

mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the ~~Veterans Administration,~~ Department of Veterans Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

(3) Where the principal amount is less than ten thousand dollars ($10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

(4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any

scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

(b) ~~No prepayment fees shall be contracted by the borrower and lender with respect to any home loan where the principal amount borrowed is one hundred thousand dollars ($100,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan.~~ Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars ($150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

(c) ~~Except as limited by subsection (b) above, a lender may charge to the borrower the fees described in G.S. 24-10. Provided, if the loan is one described in subsection (a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points, commitment fees, finance charges, or other similar charges agreed upon by the parties notwithstanding the provisions of any state law limiting the amount of discount points, commitment fees, finance charges or other similar charges which may be charged, taken, received or reserved with respect to a home loan. Provided further, that no lender on loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other than the interest permitted in G.S. 24-1.1A(a)(3).~~ If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:

(1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Loan application, origination, and commitment fees;

b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a

bona fide reduction of the interest rate or time-price differential;

c. Assumption fees to the extent permitted by G.S. 24-10(d);

d. Appraisal fees to the extent permitted by G.S. 24-10(h);

e. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

f. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars ($150.00).

(2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;

b. Assumption fees to the extent permitted by G.S. 24-10(d);

c. Appraisal fees to the extent permitted by G.S. 24-10(h);

d. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

e. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars ($150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific

modification, renewal, extension, or amendment is requested.

(c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loan or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a ~~loan~~ loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars ($300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by ~~G.S.24-1.1A(a)(1) or (2)~~ subdivision (a)(1) or (2) of this section may contract ~~in writing~~ to defer ~~payments of interest~~ the payment of all or part of one or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree ~~in writing~~ that ~~said~~ deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:

(1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:
  a. The borrower is a natural person;
  b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and
  c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:
  a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.
  b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars ($50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.
  c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.
  d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that installment.

e. No lender may charge a deferral fee for modifying or extending the maturity date of a loan or the date a balloon payment is due; provided, however, that any such modification or extension of the loan maturity date or the date a balloon payment is due shall, to the extent applicable, be considered a modification or extension subject to the provisions of subdivision (c)(2) of this section.

(h) The parties to a home loan governed by ~~G.S. 24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan."

Section 2. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-1.1E. Restrictions and limitations on high-cost home loans.**

(a) Definitions. -- The following definitions apply for the purposes of this section:

(1) 'Affiliate' means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.

(2) 'Annual percentage rate' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).

(3) 'Bona fide loan discount points' are loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(4) A 'high-cost home loan' is a loan other than an open-end credit plan or a reverse mortgage transaction in which:

a. The principal amount of the loan does not exceed the lesser of (i) the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, or (ii) three hundred thousand dollars ($300,000);

b. The borrower is a natural person;

c. The debt is incurred by the borrower primarily for personal, family, or household purposes;

d. The loan is secured by either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.

(5) 'Points and fees' means:

a. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

b. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase 'points and fees';

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. of this subdivision;

d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents; and

e. 'Points and fees' shall not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of

the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

(6) 'Thresholds' means:

a. Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' (as the term 'residential mortgage transaction' is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a 'mortgage' under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars ($1,000), if the total loan amount is less than twenty thousand dollars ($20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably

comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. Prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing; or

c. The loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

(7) 'Total loan amount' means the same as the term 'total loan amount' as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.

(b) Limitations. -- A high-cost home loan shall be subject to the following limitations:

(1) No call provision. -- No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

(2) No balloon payment. -- No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) No negative amortization. -- No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.

(4) No increased interest rate. -- No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(5) No advance payments. -- No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(6) No modification or deferral fees. -- A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(c) Prohibited Acts and Practices. -- The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(2) No lending without due regard to repayment ability. -- As used in this subsection, the term 'obligor' refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the

scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(3) No financing of fees or charges. -- In making a high-cost home loan, a lender may not directly or indirectly finance:

a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;

b. Any points and fees; or

c. Any other charges payable to third parties.

(4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. -- A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.

(5) Restrictions on home-improvement contracts. -- A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(d) Unfair and Deceptive Acts or Practices. -- Except as provided in subsection (e) of this section, the making of a high-cost home loan which violates any provisions of subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (iii) any other such subterfuge. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(e) Corrections and Unintentional Violations. -- A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsections (b) or (c) of this section, will not be deemed to have violated this section if the lender establishes that either:

(1) Within 30 days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(f) Severability. -- The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees."

Section 3. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-2.5. Mortgage bankers and mortgage brokers.**

A mortgage broker or a mortgage banker originating a loan in a table-funded loan transaction in which the mortgage broker or mortgage banker is identified as the original payee of the note shall be considered a lender for purposes of this Chapter."

Section 4. G.S. 24-8 reads as rewritten:

"**§ 24-8. Loans not in excess of $300,000; what interest, fees and charges permitted.**

~~No lender shall charge or receive from any borrower or require in connection with a loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise confer upon or for the benefit of the lender or any other person, firm or corporation any sum of money, thing of value or other consideration other than that~~

~~which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the North Carolina General Statutes, where the principal amount of a loan is not in excess of three hundred thousand dollars ($300,000.00); provided, this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan; provided that this shall not prevent the lender from collecting from the borrower for remittance to others, money in payment of taxes, assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life, accident and health, unemployment, and mortgage insurance premiums and other such fees and costs, nor from receiving the proceeds from any insurance policies where a loss occurs under the terms of such policies. This section shall not be applicable to any corporation licensed as a "Small Business Investment Company" under the provisions of the United States Code Annotated, Title 15, section 661, et seq. nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange.~~

(a) If the principal amount of a loan is less than three hundred thousand dollars ($300,000), no lender shall charge or receive from any borrower or require in connection with any loan any borrower, directly or indirectly, to pay, deliver, transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes.

(b) Notwithstanding any contrary provision of State law, if the principal amount of a loan is three hundred thousand dollars ($300,000) or more, any borrower may agree to pay, and any lender or other person may charge and collect from the borrower, interest, fees, and other charges as may be agreed upon between the parties, and the borrower and anyone claiming by or through the borrower is prohibited from asserting usury as a claim or defense.

(c) The provisions of this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm, or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan.

(d) Notwithstanding any contrary provision of State law, any lender may collect money from the borrower for the payment of (i) bona fide loan-related goods, products, and services provided or to be provided by third parties, and (ii) taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials. No third party shall charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed. Loan-related goods, products, and services include

fees for tax payment services, fees for flood certification, fees for pest-infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

(e) Notwithstanding any contrary provision of State law, any lender may receive the proceeds from any insurance policies where loss occurs under the terms of such policies.

(f) This section shall not be applicable to any corporation licensed as a 'Small Business Investment Company' under the provisions of the United States Code Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange."

Section 5. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-10.2. Consumer protections in certain home loans.**

(a) For purposes of this section, the term 'consumer home loan' shall mean a loan in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of 'flipping' a consumer home loan. 'Flipping' a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-1.1E(a)(6).

(d) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and

unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

(g) This section establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law."

Section 6.(a) Of the funds appropriated to the Office of Commissioner of Banks for the 1999-2000 fiscal year, the sum of one hundred thousand dollars ($100,000) shall be used to develop and implement, in consultation with the Attorney General, a program of public education and counseling, designed to inform the public about the methods by which predatory lenders impose unconscionable and noncompetitive fees and charges as part of complex home mortgage transactions, to protect the public from incurring such fees and charges, and otherwise to encourage the informed and responsible use of credit.

Section 6.(b) Subsection (a) of this section becomes effective only if the sum of one hundred thousand dollars ($100,000) for the 1999-2000 fiscal year is appropriated to the Office of Commissioner of Banks for the purpose stated in subsection (a) of this section. This section does not obligate the General Assembly to appropriate funds.

Section 7. The Attorney General and the Commissioner of Banks shall monitor the implementation and enforcement of this act to determine:

(1) Whether any of the provisions of this act have a measurable effect on the availability of credit in the State, and

(2) Whether the act is successfully reducing the predatory lending practices proscribed by the act.

The Attorney General and the Commissioner of Banks shall submit a written interim report of their findings and recommendations to the 2001 General Assembly on or before March 15, 2001, and a final written report to the 2002 Regular Session of the 2001 General Assembly upon its convening.

Section 8. Section 2 of this act becomes effective July 1, 2000, and applies to loans made or entered into on or after that date. Section 6 of this act becomes effective July 1, 1999. Section 7 of this act is effective when this act becomes law. The remainder of this act becomes effective October 1, 1999, and

applies to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date.

SENATE BILL 1149:
Prohibit Predatory Lending.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Cooper
Date:	July 1, 1999	**Summary by:**	Karen Cochrane Brown and O. Walker Reagan, Staff Attorneys
Version:	Third Edition		

SUMMARY: ***The Senate Bill 1149 modifies permissible fees that may be charged to a borrower by a lender in connection with home loans. The bill also creates a new section in Chapter 24 which sets restrictions and limitations on "high cost home loans", and another new section which prohibits certain unfair practices by lenders in connection with making home loans. Finally, the bill directs the Commissioner of Banks to develop and implement, in consultation with the Attorney General, a program of public education and counseling about predatory lenders if funds are appropriated for that purpose.***

BILL ANALYSIS:

Section 1 of the bill makes several changes in the law relating to kinds and amounts of fees which may be charged to a borrower by a lender in connection with a home loan, including;

- Allows prepayment penalties as negotiated between lenders and borrowers except when the loan is a home loan of $150,000 or less, the borrower is a natural person, the loan is for personal, family, or household purposes, and the loan is secured by a first mortgage. The limitations in this provision do not apply where federal law preempts. Currently no prepayment penalties are permitted if the loan is $100,000 or less, the loan can be for any purpose, the borrower does not need to be a natural person, and the loan need not be for the first mortgage on the borrower's principal residence.
- Clarifies which fees may be charged at or before loan closing, upon modification, renewal, extension, or amendment of a loan and when the lender agrees to defer payment.

Section 2 adds a new section to the law, placing restrictions on "high cost home loans". These are loans in the amount of the lesser of the conforming loan limit set by the Federal National Mortgage Association or $300,000, made to a borrower for personal, family or household purposes, secured by a manufactured home or a mortgage on the borrower's principal residence, which meets one or more of three thresholds. The thresholds relate to interest rate, the total amount charged as points and fees, and prepayment fees. Such loans are subject to certain limitations on their terms, such as no balloon payments, no call provision, no negative amortization, no modification or deferral fees, etc. In addition, certain practices will be prohibited, such as no lending without home-ownership counseling, no lending without due regard to repayment ability, and no financing of fees or charges. Violation of this provision is subject to remedies for an unfair or deceptive trade practice under Chapter 75 or the remedies under Chapter 24, but not both. Provisions are also provided to permit the correction of mistaken violations of these provisions when the lender acted in good faith and corrects the error.

Section 3 clarifies that mortgage brokers and bankers who make table-funded loans in which the broker or banker is identified as the original payee of the note are considered to be a lender under the interest rate Chapter and would be subject to the same interest rate limitations other lenders are subject to.

Section 4 clarifies that no limits on interest rates or loan fees apply to loans in excess of $300,000. This section also clarifies what fees associated with the loan that are charged by third parties may be collected in connection with the loan.

Section 5 adds another new provision to the law which makes certain practices by lenders unlawful, when used in connection with a consumer home loan. These practices include:

- Financing, directly or indirectly, credit life, disability, or unemployment insurance or other life or health insurance, other than for insurance where the premiums are paid monthly.
- The practice of "flipping", which is making a loan to a borrower that refinances an existing loan, unless there is reasonable tangible net benefit to the borrower.
- Encouraging a borrower to default on a loan prior to or in connection with the closing of a loan that refinances and existing loan.

Violations of this section shall constitute a usurious loan and an unfair or deceptive trade practice under Chapter 75. This provision also allows the court to award attorneys' fees to the prevailing party in any suit brought alleging a violation of this section.

Section 6 directs that of the funds appropriated to the Commissioner of Banks $100,000 is to be used to develop and implement a program of public education and counseling about predatory lending and only applies if the funds are appropriated to the Commissioner. No funds were included in HB 168 as enacted for this purpose.

Section 7 requires the Commissioner of Banks and the Attorney General to monitor implementation and enforcement of this bill to see if it adversely affects the availability of credit and successfully reduces predatory lending in the State.

Section 8 makes the new provisions restricting "high-cost home loans" effective July 1, 2000. The other substantive sections of the bill are effective October 1, 1999 and apply to loans made or entered into on or after that date.

VISITOR REGISTRATION SHEET

Jud IV
Name of Committee

July 1, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Fox	NCAMB - NC Assoc. of Mfg. Brokers
DON HOBART	AGs office
James Creekman	First Citizens Bank
[illegible]	Moore & Van Allen
McNeil Chestnut	AG's Office
Michael Robinson	N.C. Consumers Council
Brenda Childers	Self-Help / CRL
Jennifer Ott	Self-Help / CRL
Robin Britt, Jr	Self-Help / CRL
[illegible]	UTU
Mike [illegible]	NCSEA/AFSCME
Peter Skillern	CRA*NC
JIM BLAINE	SECU
David Simmons	ZDA, PA
Danny Lineberry	Speaker's Office

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

July 1, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NC Equity
[illegible]	UC Ags
Lynne Weaver	NC AG
Melissa Lovell	DOJ
Claudia Armod	Household Int. Group
Linwood Pleon	LM+A Assoc
Polly Guthrie	CRL
Janneke Ratcliffe	CRL
Mary Mountcastle	CRL
Dan Schline	NC Credit Unionleague
Dan Brown	CRL
Gina Dean	NAACP
Ken Kenion	American General Finance
Richard Carlton	NCFSA
Paul Stock	NC Bankers Assn.

AGENDA

HOUSE JUDICIARY IV COMMITTEE

July 6, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 1149 Prohibit Predatory Lending
Sponsor: Sen. Cooper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

July 6, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, July 6, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Earle, Jeffus, Justus, McMahan, Pope, Saunders, Tallent, Cunningham, and Dedmon. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

SB 1149 Prohibit Predatory Lending. The committee resumed its discussion of the insurance aspect of this bill. Alan Hirsch of the Attorney General's office was recognized for comments. He passed out a handout to the members of the committee, and noted that single premium insurance is responsible for equity stripping. Sen. Cooper made it clear that this legislation will not abolish credit life insurance on a monthly basis. Gary Young of CUNA Mutual spoke in favor of the bill. Peter Dahlberg, CEO American Health & Life, argued that single premium credit life insurance makes credit life insurance affordable. Martin Eakes of Self-Help spoke on the affordability issue, and then recognized Andrea Harris, President of NCIMED, for comments. Sen. Cooper asked the committee to consider whether or not single premium credit life insurance has a reasonable benefit to the consumer. Rep. McMahan asked Bill Hale of the Insurance Commission why insurance rates have not been adjusted. Mr. Hale responded by saying that the commission is working on that issue. With discussion remaining, the Chairman adjourned the meeting and no vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Alan Thresh

COMPARISON OF FINANCED SINGLE PREMIUM CREDIT INSURANCE WITH STANDARD LIFE INSURANCE

Example: $100,000 home loan at 16% for 30 years with insurance for 5 years

	with financed single premium credit insurance	**with standard life insurance**
Loan principal	$100,000	$100,000
Additional amount borrowed for single premium credit insurance*	$10,000	0
Total amount financed	**$110,000**	**$100,000**

YEARS 1 - 5

Monthly loan payment	$1,479	$1,345
Monthly premium for 5 year $100,000 level term life insurance	0	$10-62**
Total monthly payment	**$1,479**	**$1,355-1,407**

BEGINNING YEAR 6

Example 1 **Keep loan for remaining term**	No insurance **Monthly payment - $1,479**	No insurance **Monthly payment - $1,345**

The additional cost for the loan with financed credit insurance is $134/month. This represents the payments in years 6-30 needed to pay off the cost of the insurance that expired at the end of year 5. **Total payments for financed credit insurance after the insurance expires - $40,200.**

Example 2 **Refinance or move to new home**	**Amount owing on loan - $108,856.05**	**Amount owing on loan - $98,960.04**

After 5 years of loan payments, the total debt on the loan with financed credit insurance is $8,856 more than the amount originally borrowed.

* Charges will vary depending on the number of products sold. Attached is an example of $11,630 of credit insurance on a $58,800 loan.

** $10/month is a competitive rate for a non-smoking female up to 43 years old. $62/month is a competitive rate for a male smoker up to 53 years old.

111104

LN #: [redacted]
SSN: [redacted]

Green Tree
Financial Servicing Corporation
4700 Homewood Court
Suite 310
Raleigh, North Carolina 27609

LENDER'S NAME AND ADDRESS

[redacted]

BORROWER'S NAME AND ADDRESS

Loan Number [redacted]
Date December 17, 1998
Mat. Date January 4, 2014
Loan Amount $ 76,230.12

TRUTH-IN-LENDING DISCLOSURES
"I" MEANS THE BORROWER AND "YOU" MEANS THE LENDER

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me.	AMOUNT FINANCED The amount of credit provided to me or on my behalf.	TOTAL OF PAYMENTS The amount I will have paid when I have made all scheduled payments.	I have the right to receive at this time an itemization of the Amount Financed I [X] do [ ] do not want an itemization.
11.431 %	$ 117,230.66	$ 71,365.54	$ 188,596.20	

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
179	$ 697.31	Monthly beginning February 4, 1999
1	$ 63,777.71	Final Balloon Payment On January 4, 2014
	$	
	$	
	$	
	$	
	$	
	$	
	$	
	$	

[X] Demand: [ ] This loan has a demand feature. [ ] This loan is payable on demand and all disclosures are based on an assumed maturity of one year.

[X] Variable Rate: [check one below]

[ ] My loan contains a variable rate feature. Disclosures about the variable rate feature have been provided to me earlier.

[ ] The annual percentage rate may increase during the term of this transaction if _____

_____

Any increase will take the form of _____

If the rate increases by _____ % in _____, the _____

will increase to _____. The rate may not increase more often than once _____

and may not increase more than _____% each _____. The rate will not go above _____ %.

[X] Security: I am giving a security interest in: [X] [brief description of other property] Filing/Recording Fees: $ See HUD

[ ] the goods or property being purchased. [redacted]

[ ] collateral securing other loans with you may also secure this loan.

[ ] my deposit accounts and other rights I may have to the payment of money from you.

[X] Late Charge: If a payment is late I will be charged 5.000% of the amount past due.

[X] Required Deposit: The annual percentage rate does not take into account my required deposit.

Prepayment: If I pay off this loan early, I [ ] may [X] will not have to pay a penalty.
[ ] may [X] will not be entitled to a refund of part of the finance charge.

[X] Assumption: Someone buying my house [ ] may, subject to conditions, be allowed to [X] cannot assume the remainder of the mortgage on the original terms.

I can see my contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties. "e" means an estimate.

CREDIT INSURANCE - Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional costs.

Type	Premium	Term
Credit Life	$8783.34	84 MOS
Credit Disability	$1932.38	84 MOS
Joint Credit Life		
IUI	$ 914.40	60 MOS

I [X] do [ ] do not want credit life insurance.
X _____ DOB _____

I [X] do [ ] do not want credit disability insurance.
X _____ DOB _____

I [ ] do [X] do not want joint credit life insurance.
X _____ DOB _____
X _____ DOB _____

I [X] do [ ] do not want IUI insurance.
X _____

PROPERTY INSURANCE - I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from or through you I will pay $ N/A for N/A of coverage.

FLOOD INSURANCE - Flood insurance [ ] is [X] is not required. I may obtain flood insurance from anyone I want that is acceptable to you. If I get the insurance from or through you I will pay

$ N/A for N/A of coverage.

ITEMIZATION OF AMOUNT FINANCED

Amount given to me directly	$
Amount paid on my loan account	$
	$
AMOUNTS PAID TO OTHERS ON MY BEHALF:	
Insurance Companies	$
Public Officials	$
Please refer to HUD 1	$
Settlement Statement	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
(less) PREPAID FINANCE CHARGE(S)	$
Amount Financed	$

(Add all items financed and subtract prepaid finance charges.)

BY SIGNING BELOW I ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE ON THE DATE INDICATED ABOVE.

X _____ X _____ X _____

[redacted] [redacted]

Settlement Statement

Optional Form for Transactions without Sellers

111101

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0491

SSN #: 238-72-7210

Name & Address of Borrower: [redacted]	Name & Address of Lender: Green Tree Financial Servicing Corporation 4700 Homewood Court Suite 310 Raleigh, North Carolina 27609
Property Location: (if different from above) [redacted]	Settlement Agent: [redacted]
Loan Number: [redacted]	Place of Settlement: [redacted]
	Settlement Date: 12/17/98 Disb. Date: 12/22/98

L. SETTLEMENT CHARGES

800. Items Payable in Connection With Loan		
801 Loan origination fee 2 % to		4,063.34
802 Loan discount 1 % to		461.24
803 Appraisal fee to SNYDER APPRAISAL SERV		350.00
804 Credit report to Equifax/Trans Union (P.O.C.)		3.70
805 Inspection fee to		
806 Mortgage insurance application fee to		
807 Mortgage broker fee to		
808 Processing Fee to Green Tree		300.00
809 Flood Certificate or loan to FZDS		
810 Discount Points to Green Tree		
811 Courier Fee to GREEN TREE		40.00
900. Items Required By Lender To Be Paid In Advance		
901 Interest from 00/00 to 00/00 @ $ 000 /day		
902 Mortgage insurance premium for pymt. periods to		
903 Hazard insurance premium for years to		
904 Flood Insurance Premium years to		
905 Credit Ins. Premium for [redacted]		11,630.12
1000. Reserves Deposited With Lender		
1001 Hazard insurance pymt. periods @ $ per period		
1002 Mortgage insurance pymt. periods @ $ per period		
1003 City property taxes pymt. periods @ $ per period		
1004 County property taxes pymt. periods @ $ per period		
1005 Annual assessments pymt. periods @ $ per period		
1006 pymt. periods @ $ per period		
1007 pymt. periods @ $ per period		
1008		
1100. Title Charges		
1101 Settlement or closing fee to		
1102 Abstract or title search to [redacted]		400.00
1103 Title examination to		
1104 Title insurance binder to		
1105 Document preparation to		
1106 Notary fees to		
1107 Attorney's fees to (includes above item numbers:)		
1108 Title insurance to FIDELITY (includes above item numbers: 1103-1104)		154.00
1109 Lender's coverage $		
1110 Owner's coverage $		
1111		
1112		
1113		
1200. Government Recording And Transfer Charges		
1201 Recording fees: [redacted] CO REG. OF DEEDS		24.00
1202 City/county tax/stamps:		
1203 State tax/stamps:		
1204		
1205		
1300. Additional Settlement Charges		
1301 Survey to		
1302 Pest inspection to		
1303 Architectural/engineering services to		
1304 Building permit to		
1305 Flood Cert Fee Final to FZDS		
1306		
1307 Courier Fee		
1400. Total Settlement Charges (enter on line 1602)		17,422.70

M. DISBURSEMENT TO OTHERS

1501	
1502. UEC	2,490.00
1503. UEC	40,541.00
1504 ENAME CIRC	649.00
1505 CITIBK VISA	1,447.00
1506. HOME CR	4,010.00
1507 CCB	3,836.00
1508 [redacted] CO TAX COLL	774.22
1509	
1510	
1511	
1512	
1513	
1514	
1515	
1520. TOTAL DISBURSED (enter on line 1603)	53,755.22

N. NET SETTLEMENT

1600. Loan Amount	$ 76,230.12
1601. PLUS Cash/Check from Borrower	$
1602. MINUS Total Settlement Charges (line 1400)	$ 17,422.70
1603. MINUS Total Disbursements to Others (line 1520)	$ 53,755.22
1604. EQUALS Disbursements to Borrower (after expiration of any applicable rescission period required by law)	$ 5,052.20

amount of loan — $58,800

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

[ ] The Initial Escrow Account Disclosure Statement, required by Section 10(c)(1) of the Real Estate Settlement Procedures Act (RESPA) whenever an escrow account is established for a federally related mortgage loan, is attached.

The undersigned hereby acknowledges receipt of a completed copy of this statement and any attachments.

Borrower [redacted] Date

Borrower Date

Martin Eakes

Summary of Credit Insurance Financing Options
$10,000 credit insurance, $100,000 loan, 16% annual interest

$10,000 financed over 30 years

Pay Mth	Pay Amt	Total Payments	Total Interest	Total Prin	Ending Balance
60	134.48	8,068.54	7,964.55	104.00	9,896.00
120	134.48	16,137.08	15,802.86	334.22	9,665.78
180	134.48	24,205.63	23,361.73	843.90	9,156.10
240	134.48	32,274.17	30,301.94	1,972.23	8,027.77
360	134.48	48,411.25	38,411.25	10,000.00	0.00

$10,000 financed over 5 years

Pay Mth	Pay Amt	Total Payments	Total Interest	Total Prin	Ending Balance
60	243.18	14,590.83	4,590.83	10,000.00	0.00

*No additional payments after month 60; hence totals do not change through month 360

$10,000 paid monthly over 5 years

Pay Mth	Pay Amt	Total Payments	Total Interest	Total Prin	Ending Balance
60	166.67	10,000.00	0.00	10,000.00	0.00

*No additional payments after month 60; hence totals do not change through month 360

VISITOR REGISTRATION SHEET

10.00

Judiciary IV
Name of Committee

July 6, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dan Schlinz	NC Credit Union Network
Mike Beall	NC CU Network
Phil Telfer	AGO
[illegible]	ACLU
[illegible]	AGO
Theresa Stanton	AARP
Henry A Landsberger	AARP
Gary Young	CUNA Mutual Group
McNeil Clontant	AG's Office
Pauline A. Yancey	LLPP
Alan Reberg	Raleigh Mennonite Church 1116 N. Blount St., Raleigh 27604
Ronnie Moore	N.C. Democratic Party
Scott Mooneyham	AP
Molly Kennedy Fiske	N&O
John Bason + crew	UNC-TV
Eric Stahl	CRL
James Andrews	NC State AFL-CIO

VISITOR REGISTRATION SHEET

T IV
Name of Committee

7-6-99
Date 10:00

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Parker	CRL
MIKE DAVIS	NC FSA
Bradley Hi	NCSA
Sandy Sands	WCSR
Ray D Hugh	Local Govt Credit Union
Mary Mountcastle	CRL
John McMillan	NFDS
Peter Sheller	CRA* NC.
Paul Stock	NC Bankers Assn.
JE Greekman	First Citizens Bank
Dick Carlton	NCFSA
JERRY RIDENHOUR	AM GENERAL FINANCE
Ken Kinion	A.G.F
RONEY W. LAMM, JR.	Commercial Credit Corp
Gil Rollins	Allstate & Co.

VISITOR REGISTRATION SHEET

J. H
Name of Committee

7-6-99 10:00
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Zeb Alley	ZDA PA
David Simmons	ZDA PA
G J Allison	N.C. NAACP

AGENDA

HOUSE JUDICIARY IV COMMITTEE

July 6, 1999
1:00 P.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 1149 Prohibit Predatory Lending
Sponsor: Sen. Cooper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

July 6, 1999 – 1:00 p.m.

The House Committee on Judiciary IV met on Tuesday, July 6, 1999, in Room 421 LOB at 1:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Culpepper, Earle, Jeffus, Justus, McMahan, Pope, Saunders, Tallent, Cunningham, and Hackney. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

SB 1149 Prohibit Predatory Lending. The committee resumed its discussion of this bill from the previous meeting. Rep. Justus questioned what percentage of loans default. Bill Hale of the Insurance Commission stated that there were no statistics maintained with regard to that issue. Paul Stock of the North Carolina Bankers Association was recognized for comments, and he spoke in favor of the bill. Rep. Culpepper was recognized to send forth an amendment, and he explained that the amendment would delay the implementation of the credit life insurance aspect of the bill, and appoint a Legislative Commission to study the issue of credit life insurance. Alan Hirsch of the Attorney General's office and Sen. Cooper agreed to the amendment. Rep. Cunningham spoke against the amendment, and stated that he could not support anything that would allow this practice to continue any longer. Rep Culpepper moved the adoption of the amendment, motion passed. A representative of the North Carolina Fair Housing Association was recognized for comments and distributed a handout which is attached for the record. Rep. Culpepper sent forth a technical amendment, and moved its adoption. Motion passed. Rep. McMahan moved that amendments be enrolled into a House committee substitute and that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. Motion passed.

The meeting adjourned at 1:20 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

reported 7/7/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 1149 A BILL TO BE ENTITLED AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1149

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

S1149-ARG-005

Date_____,1999

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

moves to amend the bill on page 16, lines 31-40,
by rewriting the lines to read:
"Section 7. The Legislative Research Commission shall study the implementation and enforcement of this act including:
(1) Whether the provisions of this act have a measurable effect on the availability of credit in the State;
(2) Whether the act is successfully reducing the predatory lending practices proscribed by the act; and
(3) Whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, which practice is prohibited by G.S. 24-10.2(b).
The Commission shall report their findings and recommendations on the issue of financing credit insurance premiums to the 2000 Regular Session of the 1999 General Assembly. The Commission may report their findings and recommendations to the 2001 General Assembly and shall make a final report to the 2002 Regular Session of the 2001 General Assembly.";

and on page 16, lines 41-42,
by rewriting the line to read:
"Section 8. Section 2 of this act and G.S. 24-10.2(b), as enacted in Section 5 of this act, become effective July 1, 2000 and apply to

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1149

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

S1149-ARG-005

loans made or entered into on or after that date. Section 6 of this act"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1149

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

S1149-ASK-001

Date_____,1999

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

Rep.

moves to amend the bill on page 7, line 37,
by deleting the word "are" and substituting the word "means"; and

on page 8, line 1
by deleting the word "is" and substituting the word "means".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1149
Judiciary I Committee Substitute Adopted 6/16/99
Third Edition Engrossed 6/22/99
Proposed Committee Substitute S1149-PCS7707-RG

Short Title: Prohibit Predatory Lending. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A reads as rewritten:

"**§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.**

(a) Notwithstanding any other provision of this ~~Chapter,~~ Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars ($10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;

(2) Where the principal amount is less than ten thousand dollars ($10,000) the parties may contract for the payment of interest as

agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the ~~Veterans Administration,~~ Department of Veterans Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

(3) Where the principal amount is less than ten thousand dollars ($10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

(4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment.

For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

(b) ~~No prepayment fees shall be contracted by the borrower and lender with respect to any home loan where the principal amount borrowed is one hundred thousand dollars ($100,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan.~~ Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars ($150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

(c) ~~Except as limited by subsection (b) above, a lender may charge to the borrower the fees described in G.S. 24-10. Provided, if the loan is one described in subsection (a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points, commitment fees, finance charges, or other similar charges agreed upon by the parties notwithstanding the provisions of any state law limiting the amount of discount points, commitment fees, finance charges or other similar charges which may be charged, taken, received or reserved with respect to a home loan. Provided further, that no lender on loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other than the interest permitted in G.S. 24-1.1A(a)(3).~~ If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:

(1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Loan application, origination, and commitment fees;

b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of the interest rate or time-price differential;
c. Assumption fees to the extent permitted by G.S. 24-10(d);
d. Appraisal fees to the extent permitted by G.S. 24-10(h);
e. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and
f. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars ($150.00).

(2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:
a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;
b. Assumption fees to the extent permitted by G.S. 24-10(d);
c. Appraisal fees to the extent permitted by G.S. 24-10(h);
d. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and
e. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars ($150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and

is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.

(c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loan or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a ~~loan~~ loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars ($300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by ~~G.S.24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may contract ~~in writing~~ to defer ~~payments of interest~~ the payment of all or part of one or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree ~~in writing~~ that ~~said~~ deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in

subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:

(1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:

a. The borrower is a natural person;

b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and

c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:

a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.

b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars ($50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.

c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.

d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new

deferral agreement is entered into with respect to that installment.

e. No lender may charge a deferral fee for modifying or extending the maturity date of a loan or the date a balloon payment is due; provided, however, that any such modification or extension of the loan maturity date or the date a balloon payment is due shall, to the extent applicable, be considered a modification or extension subject to the provisions of subdivision (c)(2) of this section.

(h) The parties to a home loan governed by ~~G.S. 24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan."

Section 2. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-1.1E. Restrictions and limitations on high-cost home loans.**

(a) Definitions. -- The following definitions apply for the purposes of this section:

(1) 'Affiliate' means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.

(2) 'Annual percentage rate' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).

(3) 'Bona fide loan discount points' means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is

reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(4) A 'high-cost home loan' means a loan other than an open-end credit plan or a reverse mortgage transaction in which:

a. The principal amount of the loan does not exceed the lesser of (i) the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, or (ii) three hundred thousand dollars ($300,000);

b. The borrower is a natural person;

c. The debt is incurred by the borrower primarily for personal, family, or household purposes;

d. The loan is secured by either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.

(5) 'Points and fees' means:

a. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

b. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase 'points and fees';

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. of this subdivision;

d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents; and

e. 'Points and fees' shall not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for

perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

(6) 'Thresholds' means:

a. Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' (as the term 'residential mortgage transaction' is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a 'mortgage' under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars ($1,000), if the total loan amount is less than twenty thousand dollars ($20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%)

the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. Prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing; or

c. The loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

(7) 'Total loan amount' means the same as the term 'total loan amount' as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.

(b) Limitations. -- A high-cost home loan shall be subject to the following limitations:

(1) No call provision. -- No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

(2) No balloon payment. -- No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) No negative amortization. -- No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.

(4) No increased interest rate. -- No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(5) No advance payments. -- No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(6) No modification or deferral fees. -- A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(c) Prohibited Acts and Practices. -- The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(2) No lending without due regard to repayment ability. -- As used in this subsection, the term 'obligor' refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the

scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(3) No financing of fees or charges. -- In making a high-cost home loan, a lender may not directly or indirectly finance:

a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;

b. Any points and fees; or

c. Any other charges payable to third parties.

(4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. -- A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.

(5) Restrictions on home-improvement contracts. -- A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(d) Unfair and Deceptive Acts or Practices. -- Except as provided in subsection (e) of this section, the making of a high-cost home loan which violates any provisions of subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (iii) any other such subterfuge. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(e) Corrections and Unintentional Violations. -- A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsections (b) or (c) of this section, will not be deemed to have violated this section if the lender establishes that either:

(1) Within 30 days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(f) Severability. -- The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees."

Section 3. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-2.5. Mortgage bankers and mortgage brokers.**

A mortgage broker or a mortgage banker originating a loan in a table-funded loan transaction in which the mortgage broker or mortgage banker is identified as the original payee of the note shall be considered a lender for purposes of this Chapter."

Section 4. G.S. 24-8 reads as rewritten:

"**§ 24-8. Loans not in excess of $300,000; what interest, fees and charges permitted.**

~~No lender shall charge or receive from any borrower or require in connection with a loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise confer upon or for the benefit of the lender or any other person, firm or corporation any sum of money, thing of value or other consideration other than that~~

~~which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the North Carolina General Statutes, where the principal amount of a loan is not in excess of three hundred thousand dollars ($300,000.00); provided, this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan; provided that this shall not prevent the lender from collecting from the borrower for remittance to others, money in payment of taxes, assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life, accident and health, unemployment, and mortgage insurance premiums and other such fees and costs, nor from receiving the proceeds from any insurance policies where a loss occurs under the terms of such policies. This section shall not be applicable to any corporation licensed as a "Small Business Investment Company" under the provisions of the United States Code Annotated, Title 15, section 661, et seq. nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange.~~

(a) If the principal amount of a loan is less than three hundred thousand dollars ($300,000), no lender shall charge or receive from any borrower or require in connection with any loan any borrower, directly or indirectly, to pay, deliver, transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes.

(b) Notwithstanding any contrary provision of State law, if the principal amount of a loan is three hundred thousand dollars ($300,000) or more, any borrower may agree to pay, and any lender or other person may charge and collect from the borrower, interest, fees, and other charges as may be agreed upon between the parties, and the borrower and anyone claiming by or through the borrower is prohibited from asserting usury as a claim or defense.

(c) The provisions of this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm, or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan.

(d) Notwithstanding any contrary provision of State law, any lender may collect money from the borrower for the payment of (i) bona fide loan-related goods, products, and services provided or to be provided by third parties, and (ii) taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials. No third party shall charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed. Loan-related goods, products, and services include

fees for tax payment services, fees for flood certification, fees for pest-infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

(e) Notwithstanding any contrary provision of State law, any lender may receive the proceeds from any insurance policies where loss occurs under the terms of such policies.

(f) This section shall not be applicable to any corporation licensed as a 'Small Business Investment Company' under the provisions of the United States Code Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange."

Section 5. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-10.2. Consumer protections in certain home loans.**

(a) For purposes of this section, the term 'consumer home loan' shall mean a loan in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of 'flipping' a consumer home loan. 'Flipping' a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-1.1E(a)(6).

(d) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and

unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

(g) This section establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law."

Section 6.(a) Of the funds appropriated to the Office of Commissioner of Banks for the 1999-2000 fiscal year, the sum of one hundred thousand dollars ($100,000) shall be used to develop and implement, in consultation with the Attorney General, a program of public education and counseling, designed to inform the public about the methods by which predatory lenders impose unconscionable and noncompetitive fees and charges as part of complex home mortgage transactions, to protect the public from incurring such fees and charges, and otherwise to encourage the informed and responsible use of credit.

Section 6.(b) Subsection (a) of this section becomes effective only if the sum of one hundred thousand dollars ($100,000) for the 1999-2000 fiscal year is appropriated to the Office of Commissioner of Banks for the purpose stated in subsection (a) of this section. This section does not obligate the General Assembly to appropriate funds.

Section 7. The Legislative Research Commission shall study the implementation and enforcement of this act including:

(1) Whether the provisions of this act have a measurable effect on the availability of credit in the State;

(2) Whether the act is successfully reducing the predatory lending practices proscribed by the act; and

(3) Whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, which practice is prohibited by G.S. 24-10.2(b).

The Commission shall report their findings and recommendations on the issue of financing credit insurance premiums to the 2000 Regular Session of the 1999 General Assembly. The Commission may report their findings and recommendations to the 2001 General Assembly and shall make a final report to the 2002 Regular Session of the 2001 General Assembly.

Section 8. Section 2 of this act and G.S. 24-10.2(b), as enacted in Section 5 of this act, become effective July 1, 2000, and apply to loans made or entered into on or after that date. Section 6 of this act becomes effective July 1, 1999. Section 7 of this act is effective when this act becomes law. The remainder of this act becomes effective October 1, 1999, and applies to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date.

VISITOR REGISTRATION SHEET

Judiciary IV — July 6, 1999 - 1:00
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Sisson	Capitol Group
Dan Brown	Coalition for Responsible Lending (CRL)
Mary Mountcastle	CRL
[illegible]	NCJCDC
Brenda Simmons	NC Equity
Elba Schloeman	Coalition for Responsible Lending
Ray de Hoff	Local Gov't Credit Union
Jacob Klinger	ACLU
Susan Valaoras	Nationwide
Kristine Gunning	NCPIRG
Phil Telfer	NC AG
Lemuel Adams	NCAG
Jan Schlichtmann	NCCUN
Phil Lehman	NC AGO
McNeil Chestnut	NC AG's office
Angela Ohm	CRL
[illegible]	NCSR
[illegible]	Triangle J COG
Deborah Ross	ACLU
Polly Guthrie	CRL
DAVID BECK	CRL
John Parker	CRL
Martin Eakes	Self-Help
Eric Stein	CRL
Stella Adams	NCFHC / CRL
ANDREA HARRIS	NCIMFI
Jerry Bowles	Bowles and Assoc.
RONEY LAMM JR.	Commercial Credit.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Carlton	NCFSA
Ken Kinion	American General
JERRY RIDENHOUR	AM GENERAL FIN
Peter Dahlberg	American Health & Life Ins
Guy Rohrer	Allstate & Co.
[illegible]	NCFSA
MIKE DAVIS	NCFSA
Walter Jones	NCDOI
[illegible]	
Frank Gray	N.C. Mer. Housing
DON HOBART	N.C. AG's Office
Brian Beatty	DOJ
[illegible]	N&O
John Bernhardt	Zelle Alley P.A.
[illegible]	D Moore, Van Allen
Alan Hirsch	Atty Gen's Office

AGENDA

HOUSE JUDICIARY IV COMMITTEE

July 8, 1999
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Tim Hovis
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

SB 25 Guardian Ad Litem/Attys
Sponsor: Sen. Wellons

SB 1025 Reorganization Superior Court Divisions/Pilot Fund
Sponsor: Sen. Clodfelter

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

July 8, 1999 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, July 8, 1999, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Jeffus, Justus, McMahan, Pope, Saunders, and Tallent. Tim Hovis and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

SB 25 Guardian Ad Litem/Attorneys. Sen. Wellons, bill sponsor, was recognized to explain the bill. He noted that the House companion bill (HB 114), which contained identical language, passed JIV earlier this session and was re-referred to the Committee on Appropriations. No further action was taken on that bill. Rep. Bowie moved for a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations. Motion passed.

SB 1025 Reorganization Superior Court Divisions/Pilot Funds. Sen. Clodfelter, bill sponsor, was recognized to explain the bill. He began by noting that the funds for the pilot program were included in the budget, but the pilots have not been chosen yet. He then explained that the bill would expand the number of Superior Court divisions from 4 to 8. Bill Scoggin of the North Carolina Bar Association spoke in favor of the bill, as did Ann Winner of the Association of Women Attorneys. Jeanne Bonds of the Administrative Office of the Courts informed the committee that the Chief Justice convened a task force on this issue, and their recommendations are contained in the bill. Rep. Baddour noted that it was important that judges had input because they can assist in making the bill practicable. Rep. Justus questioned the necessity of rotation. Sen. Clodfelter responded by noting that rotation is mandated by the Constitution. Rep. Justus argued that rotation leads to judge shopping. Rep. Haire contended that judge shopping does not exist. Ms. Bonds noted that the Superior Court calendar is set every 6 months. Reps. Baddour and Bowie noted that change is incremental and that these are only pilots and they will report back in 2001. Rep. Baddour also noted that there was a lot of flexibility in this bill, but he stated that he had confidence in the system. Rep. Justus questioned how many judges would be added as a result of this bill, and Rep. Baddour responded by saying that the hope was none. Judge Ross, Director of AOC, was recognized for comments on the bill. Rep. Culpepper was recognized for a technical amendment. He explained that the appropriation in the budget was for the House bill, and with the amendment it applies to this bill. Rep. Culpepper moved for adoption of the amendment. Motion passed. Rep. Thomas moved that the amendment be enrolled into a House committee substitute and that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute, and recommendation that the

House committee substitute be re-referred to the Committee on Appropriations. Motion passed.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

Reported 7/8

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
S.B. 25 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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 3

SENATE BILL 25
Judiciary I Committee Substitute Adopted 3/2/99
Corrected Copy 3/3/99

Short Title: Guard. Ad Litem/Attys. (Public)

Sponsors:

Referred to:

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-601, as recodified by Section 6 of S.L. 1998-202, reads as rewritten:

"**§ 7B-601. Appointment and duties of guardian ad litem.**

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The juvenile is a party in all actions under this Subchapter. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate ~~at the end of two years.~~ when the permanent plan has been achieved for the juvenile and approved by the court. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights ~~through the dispositional phase of~~

~~the proceedings, and after disposition when necessary to further the best interests of the juvenile.~~ throughout the proceeding. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional ~~hearing;~~ hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) ~~The court may order the department of social services or the guardian ad litem to conduct follow-up investigations to ensure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met.~~ The court may ~~also~~ authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) ~~The court may grant the~~ The guardian ad litem has the authority to ~~demand~~ obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. ~~Neither the physician-patient privilege nor the husband-wife privilege~~ No privilege other than the attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law."

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

SENATE BILL 25:
Guard. Ad Litem/Attys.

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Sen. Wellons
		Summary by:	Tim Hovis Committee Counsel
Date:	July 7, 1999		
Version:	Third Edition		

SUMMARY: Senate Bill 25 provides that, in cases of abused, neglected, or dependent juveniles, an attorney shall be appointed at all times throughout the proceeding to assure protection of the juvenile's legal rights.

CURRENT LAW: Under current law, an attorney is required to be appointed in all cases of abuse, neglect, or dependency through the dispositional phase of the proceedings and after disposition when necessary to further the best interests of the juvenile. In the dispositional phase of the proceeding, the court may dismiss the case or provide for continued care and supervision of the juvenile, including termination of a parent or guardian's custody.

Current law also authorizes the court to grant guardian ad litem the authority to demand confidential information and reports that the guardian ad litem believes is relevant to the juvenile's case.

BILL ANALYSIS: Senate Bill 25 would require that an attorney be appointed at all times within the proceeding in cases of abuse, neglect, or dependency.

The bill also grants a guardian ad litem authority to obtain any confidential information or reports that a guardian deems relevant to the case. Furthermore, no privilege, other than attorney client privilege, may be invoked to prevent the guardian from obtaining the information.

reported 7/8

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 1025 A BILL TO BE ENTITLED AN ACT TO REORGANIZE THE SUPERIOR COURT DIVISION BY EXPANDING THE NUMBER OF JUDICIAL DIVISIONS FROM FOUR TO EIGHT, TO ESTABLISH PILOT PROGRAMS FOR CONSIDERATION OF THE RECOMMENDATIONS OF THE COMMISSION FOR THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA CONCERNING ORGANIZATION AND MANAGEMENT OF THE TRIAL COURT, AND TO APPROPRIATE FUNDS TO A RESERVE FOR IMPLEMENTATION OF THOSE PILOT PROGRAMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill unfavorable as to Senate committee substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on Appropriations.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. _____ DATE _____

S. B. No. 1025 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) / Sen.)

moves to amend the bill on page 5, lines 22-26

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"Section 3.

"The one hundred fifty thousand dollars ($ 150,000) provided by S.L. 1997-237 for implementation of House Bill 1225 shall instead be used to implement the provisions of this act (the companion bill), and to provide equipment and consulting and other services necessary to operate the pilot programs established in this act. The".

SIGNED Bill Culpepper

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 1025
Judiciary I Committee Substitute Adopted 6/23/99
Third Edition Engrossed 6/30/99

Short Title: Reorg. Sup. Ct. Divisions/Pilot Funds. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE THE SUPERIOR COURT DIVISION BY EXPANDING THE NUMBER OF JUDICIAL DIVISIONS FROM FOUR TO EIGHT, TO ESTABLISH PILOT PROGRAMS FOR CONSIDERATION OF THE RECOMMENDATIONS OF THE COMMISSION FOR THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA CONCERNING ORGANIZATION AND MANAGEMENT OF THE TRIAL COURT, AND TO APPROPRIATE FUNDS TO A RESERVE FOR IMPLEMENTATION OF THOSE PILOT PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"**§ 7A-41. Superior court divisions and districts; judges.**

(a) The counties of the State are organized into <u>eight</u> judicial divisions and <u>62</u> superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck,	2

		Dare, Gates, Pasquotank, Perquimans	
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	2
Second	4A	Duplin, Jones, Sampson	1
Second	4B	Onslow	1
Second	5	New Hanover, Pender	3
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
~~Second~~ Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1

Fourth	12C	(part of Cumberland, see subsection (b))	2
Fourth	13	Bladen, Brunswick, Columbus	2
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	1
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
~~Third~~ Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Moore, Randolph	2
Sixth	19C	Rowan	1
Sixth	20A	Anson, Richmond	1
Sixth	20B	Stanly, Union	2
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth, see subsection (b))	1
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	2
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
~~Fourth~~ Eighth	24	Avery, Madison,	1

		Mitchell,	
		Watauga, Yancey	
Seventh	25A	Burke, Caldwell	2
Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg, see subsection (b))	2
Seventh	26B	(part of Mecklenburg, see subsection (b))	2
Seventh	26C	(part of Mecklenburg, see subsection (b))	2
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2
Eighth	28	Buncombe	2
Eighth	29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
Eighth	30A	Cherokee, Clay, Graham, Macon, Swain	1
Eighth	30B	Haywood, Jackson	1".

Section 2.(a) The Chief Justice is requested to choose up to two of the eight divisions established pursuant to G.S. 7A-41, as amended in Section 1 of this act, or portions of those divisions, without dividing district court districts, in which to establish pilot programs for consideration of the recommendations of the Commission for the Future of Justice and the Courts in North Carolina concerning organization and management of the trial court.

Section 2.(b) In conducting the pilot program or programs, the Chief Justice is requested to:

(1) After consultation with the senior resident superior court judges and chief district court judges of the districts comprising each pilot region, designate one judge to serve as the coordinating judge for that pilot program;

(2) Assign staff to assist each coordinating judge;

(3) Establish and, in consultation with the affected judges, district attorneys, and clerks of court, appoint the members of an advisory judicial council for each pilot program;

(4) Authorize the coordinating judge, in consultation with the clerk of superior court, the district attorney, and the senior resident superior court judges and with the chief district court judges, to:

a. Establish a schedule for all sessions of trial court;

b. Assign judges to sessions of court;

c. Develop and implement a procedure for the calendaring of cases, both criminal and civil, with assistance from the trial court administrator;

d. Assign particular categories of cases to individual judges;

e. Notwithstanding any other provision of law, determine the circumstances under which judges may hear motions and other pretrial proceedings outside the county in which the case arose but within the same judicial district;

f. Notwithstanding any other provision of law, determine the circumstances under which a case may be tried outside the county in which it arose but within the same judicial district, when reasonably convenient for the parties and witnesses and likely to expedite the final resolution of the case;

g. Establish local rules for the pilot program, subject to the approval of the Chief Justice; and

h. Transfer funds within budget categories to the extent allowed by the General Assembly and the Director of the Budget.

Section 2.(c) The Chief Justice and the Administrative Office of the Courts shall report to the General Assembly by March 1, 2002, on the operation of this pilot program and its implications for improving the efficiency and consistency of the State court system and providing better flexibility for addressing future changes in caseload.

Section 3. There is appropriated from the General Fund to the Judicial Department the sum of one hundred fifty thousand dollars ($150,000) for the 1999-2000 fiscal year to be placed in a reserve for use by the Administrative Office of the Courts to establish support positions and to provide equipment and consulting and other services necessary to operate the pilot programs established in this act. The Administrative Office of the Courts shall consult with the judge or judges designated as coordinating judges for each pilot before establishing any positions or expending any funds for equipment and support services. Each coordinating judge shall be the hiring authority for purposes of administering the positions created from funds appropriated to the reserve fund. The Administrative Office of the Courts shall include an accounting of the use of these funds in the report required by subsection (c) of Section 2 of this act.

Section 4. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1025
Judiciary I Committee Substitute Adopted 6/23/99
Third Edition Engrossed 6/30/99
House Committee Substitute Favorable 7/8/99
Proposed House Committee Substitute S1025-PCS6703-LL

Short Title: Reorg. Sup. Ct. Divisions/Pilot Funds. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE THE SUPERIOR COURT DIVISION BY EXPANDING THE NUMBER OF JUDICIAL DIVISIONS FROM FOUR TO EIGHT, TO AUTHORIZE PILOT PROGRAMS FOR THE ORGANIZATION AND MANAGEMENT OF THE TRIAL COURTS, AND TO DIRECT THE USE OF FUNDS APPROPRIATED FOR IMPLEMENTATION OF THOSE PILOT PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"**§ 7A-41. Superior court divisions and districts; judges.**

(a) The counties of the State are organized into <u>eight</u> judicial divisions and <u>62</u> superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates,	2

		Pasquotank, Perquimans	
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	2
Second	4A	Duplin, Jones, Sampson	1
Second	4B	Onslow	1
Second	5	New Hanover, Pender	3
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
~~Second~~ Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1
Fourth	12C	(part of Cumberland,	2

		see subsection (b))	
Fourth	13	Bladen, Brunswick, Columbus	2
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	1
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
~~Third~~ Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Moore, Randolph	2
Sixth	19C	Rowan	1
Sixth	20A	Anson, Richmond	1
Sixth	20B	Stanly, Union	2
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth, see subsection (b))	1
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	2
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
~~Fourth~~ Eighth	24	Avery, Madison, Mitchell,	1

			Watauga, Yancey	
Seventh		25A	Burke, Caldwell	2
Seventh		25B	Catawba	2
Seventh		26A	(part of Mecklenburg, see subsection (b))	2
Seventh		26B	(part of Mecklenburg, see subsection (b))	2
Seventh		26C	(part of Mecklenburg, see subsection (b))	2
Seventh		27A	Gaston	2
Seventh		27B	Cleveland, Lincoln	2
Eighth		28	Buncombe	2
Eighth		29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
Eighth		30A	Cherokee, Clay, Graham, Macon, Swain	1
Eighth		30B	Haywood, Jackson	1."

Section 2.(a) The Chief Justice may choose up to two of the eight divisions established pursuant to G.S. 7A-41, as amended in Section 1 of this act, or portions of those divisions, without dividing district court districts, in which to establish pilot programs for the organization and management of the trial courts.

Section 2.(b) In conducting the pilot program or programs, the Chief Justice is requested to:

(1) After consultation with the senior resident superior court judges and chief district court judges of the districts comprising each pilot region, designate one judge to serve as the coordinating judge for that pilot program;

(2) Assign staff to assist each coordinating judge;

(3) Establish and, in consultation with the affected judges, district attorneys, and clerks of court, appoint the members of an advisory judicial council for each pilot program;

(4) Authorize the coordinating judge, in consultation with the clerks of superior court, the district attorneys, the senior resident superior court judges, and the chief district court judges, and after an opportunity for comment by members of the public and the practicing attorneys within the pilot area, to:

a. Establish a schedule for all sessions of trial court;

b. Assign judges to sessions of court;

c. Develop and implement a procedure for the calendaring of cases, both criminal and civil, with assistance from the trial court administrator;

d. Assign particular categories of cases to individual judges;
e. Notwithstanding any other provision of law, determine the circumstances under which judges may hear motions and other pretrial proceedings outside the county in which the case arose but within the same judicial district;
f. Notwithstanding any other provision of law, determine the circumstances under which a case may be tried outside the county in which it arose but within the same judicial district, when reasonably convenient for the parties and witnesses and likely to expedite the final resolution of the case;
g. Establish local rules for the management of the pilot program, subject to the approval of the Chief Justice; and
h. Transfer funds within budget categories to the extent allowed by the General Assembly and the Director of the Budget.

Section 2.(c) The Chief Justice and the Administrative Office of the Courts shall report to the General Assembly by March 1, 2002, on the operation of this pilot program and its implications for improving the efficiency and consistency of the State court system and providing better flexibility for addressing future changes in caseload.

Section 3. The one hundred fifty thousand dollars ($150,000) provided by S.L. 1997-237 for implementation of House Bill 1225 shall instead be used to implement the provisions of this act (the companion bill), and to provide equipment and consulting and other services necessary to operate the pilot programs authorized in this act. The Administrative Office of the Courts shall consult with the judge or judges designated as coordinating judges for each pilot before establishing any positions or expending any funds for equipment and support services. Each coordinating judge shall be the hiring authority for purposes of administering the positions created from funds appropriated to the reserve fund. The Administrative Office of the Courts shall include an accounting of the use of these funds in the report required by subsection (c) of Section 2 of this act.

Section 4. This act becomes effective January 1, 2000.

SENATE BILL 1025:
Reorganize Superior Court Divsions/Pilot Funds

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senators Clodfelter and Odom
Date:	July 8, 1999	**Summary by:**	Jo B. McCants Esther Manheimer Committee Counsel
Version:	Third Edition		

SUMMARY: Senate Bill 1025 is a recommendation of the Commission for the Future of Justice and the Courts of North Carolina (Futures Commission). The bill increases the number of Judicial Divisions from four to eight. The bill allows the Chief Justice to choose up to two of the new divisions to participate in a pilot program to consider the recommendations of the Futures Commission concerning the organization and management of the trial court. The Chief Justice and the AOC must report to the General Assembly by March 1, 2002, on the operation of the pilot program. There is an appropriation from the General Fund to the AOC in the amount of $150,000 for fiscal year 1999-2000 to establish the pilot program. The act becomes effective on January 1, 2000.

BILL ANALYSIS:

The bill would establish eight judicial divisions and sixty-two superior court districts. Currently, we have four judicial divisions.

The Chief Justice is requested to choose up to two of the divisions, without dividing district court districts, to participate in a pilot program for consideration of the recommendations of the Futures Commission concerning the organization and management of the trial court. When establishing the pilot program the Chief Justice should:

1) Designate one judge to serve as the coordinating judge for the pilot program;
2) Assign a trial court administrator to assist each coordinating judge;
3) Appoint the members of an advisory judicial council for each pilot; and
4) Authorize the coordinating judge to perform various administrative acts that effect the operation of the local courts.

The Chief Justice and AOC must report to the General Assembly by March 1, 2002, on the operation of the pilot program and its implications for improving the efficiency and consistency of the State court system and providing flexibility for future changes in caseloads.

An appropriation is made to the Judicial Department in the amount of $150,000 for the 1999-2000 fiscal year to be placed in a reserve for use by the AOC to establish support positions and to provide equipment and consulting services needed to operate the pilot programs. The AOC must include in its report to the General Assembly an accounting of how the funds have been expended.

The act becomes effective on January 1, 2000.

VISITOR REGISTRATION SHEET

Judiciary IV 10am 7-8-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Deanne Wrinkle	NCSBA
2.	Michael Crowell	Atty, Raleigh
3.	Paula A. Hoef	Covenant w/NC's Children
4.	Anne Wheeler	NC ~~AWA~~
5.	Cheri Green	NCDSS/DNHS
6.	JoAnn Lamm	NCDSS/DNHS
7.	AL DEITCH	DOA/YA+O
8.	Larry Dix	OJJ
9.		
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2000

HOUSE
JUDICIARY IV
COMMITTEE

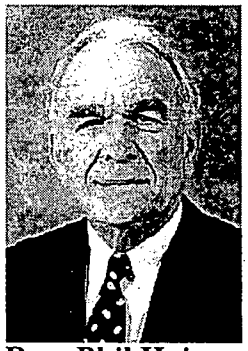
MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
1999 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
BADDOUR, Phil Chairman	Elizabeth Kirkland Committee Assistant	715-0850	2301	31
HAIRE, Phil	Sara Jane Lennard	715-3005	419B	47
THOMAS, Scott	Dianne Dagenhart	733-5863	531	103
BOWIE, Joni	Sharon Gaudette	733-5877	538	53
CULPEPPER, Bill	Dot Crocker	715-3028	404	36
DECKER, Michael	Barbara Hocutt	733-5904	1021	40
EARLE, Beverly	Ann Raeford	733-5747	535	95
JEFFUS, Maggie	Mary Lee Robinson	733-5191	1013	4
JUSTUS, Larry	Carolyn Justus	733-5958	640	13
MCMAHAN, Ed	Sharon Cram	733-5661	1019	102
POPE, Art	Barbara Rhodes	733-5809	539	101
SAUNDERS, Drew	Ruth Fish	733-5776	1219	82
TALLENT, Tim	Joyce Bulluck	733-5934	1104	26
WEISS, Jennifer	Susan Doty	733-5781	2221	16
Esther Manheimer, Committee Counsel	Robin Johnson, Committee Counsel	733-2578	545	

HOUSE JUDICIARY IV COMMITTEE

Representative Phil Baddour
Chairman



Rep. Phil Haire
Vice-Chairman

Rep. Scott Thomas
Vice-Chairman

Rep. Joni Bowie

Rep. Bill Culpepper

Rep. Michael Decker

Rep. Beverly Earle

Rep. Maggie Jeffus

Rep. Larry Justus

Rep. Ed McMahan

Rep. Art Pope

Rep. Drew Saunders

Rep. Tim Tallent

Rep. Jennifer Weiss

ATTENDANCE

House Judiciary IV

(Name of Committee)

DATES	6/1	6/6	6/20	6/22	6/21 10am	6/21 1pm	6/29								
Baddour, Phil (Chair)	✓	✓	✓	✓	✓	✓	✓								
Haire, Phil (Vice-Chair)	✓	✓	✓	✓	✓	✓	✓								
Thomas, Scott (Vice-Chair)	✓	✓	✓	✓	✓		EXC								
Bowie, Joni	✓		✓	✓	✓		✓								
Culpepper, Bill	✓			✓	✓	✓	✓								
Decker, Michael	✓	✓	✓	✓	✓	✓	✓								
Earle, Beverly		✓	✓	✓		✓									
Jeffus, Maggie	✓	✓	✓	✓			✓								
Justus, Larry	✓	✓	✓	✓			✓								
McMahan, Ed	✓	✓	✓	✓	✓		✓								
Pope, Art		✓	✓	✓	✓										
Saunders, Drew	✓		✓	✓	✓	✓	✓								
Tallent, Tim															
Weiss, Jennifer	✓	✓	✓	✓	✓		✓								
Ex-Officio Members															
Cunningham, Pete															
Dedmon, Andrew	✓														
Hackney, Joe	✓														

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY IV Valid Through 31-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 14	ALLRED	CEMETERY CONSUMER PROTECTION	*S -REF TO COM ON COMMERCE	02-16-99	04-22-99
H 34=	HURLEY	LOSE CONTROL LOSE YOUR LICENSE	H -RE-REF COM ON JUDICIV	02-16-99	
H 50	HURLEY	FAYETTEVILLE TRAFFIC VIOLATIONS	R -CH. SL 99-0017	02-16-99	03-15-99
H 94	MICHAUX	SUPERIOR COURT DIVISION ELECTIONS	HF-POSTPONED INDEFINITELY	02-17-99	03-03-99
H 114=	HIATT	GUARD. AD LITEM/ATTYS	*H -RE-ASSIGNED TO APP-JPS	02-22-99	04-20-99
H 146=	CULPEPPER	UNIFORM PRUDENT INVESTOR ACT	H -REF TO COM ON JUDICIV	02-25-99	
H 162=	CULPEPPER	1999 TECHNICAL CORRECTIONS	*R -CH. SL 99-0456	02-25-99	04-23-99
H 200=	CULPEPPER	SLAYER/FORFEITURE OF PROP. RIGHTS	*HF-POSTPONED INDEFINITELY	03-02-99	03-15-99
H 201=	CULPEPPER	APPOINTMENT OF SUCCESSOR TRUSTEES	R -CH. SL 99-0118	03-02-99	03-11-99
H 202=	CULPEPPER	AMEND PROFESSIONAL CORP. ACT	*R -CH. SL 99-0440	03-02-99	03-22-99
H 226=	CULPEPPER	FORECLOSURE NOTICE	*R -CH. SL 99-0137	03-03-99	03-22-99
H 261=	CULPEPPER	LETTERS OF CREDIT UCC REWRITE	H -REF TO COM ON JUDICIV	03-04-99	
H 263=	CULPEPPER	UNCLAIMED PROPERTY ACT	H -REF TO COM ON JUDICIV	03-04-99	
H 272	THOMAS	CHILD CUSTODY VIOLATION/MISDEMEANOR	H -REF TO COM ON JUDICIV	03-04-99	
H 290	BADDOUR	AMEND CRIME VICTIMS COMP. ACT	R -CH. SL 99-0269	03-04-99	03-25-99
H 300=	CULPEPPER	APPEAL OR TRANSFER FROM CLERK	H -REF TO COM ON JUDICIV	03-04-99	
H 302=	CULPEPPER	ENHANCE CHILD SUPPORT ENFORCEMENT	*R -CH. SL 99-0293	03-04-99	04-22-99
H 303=	SAUNDERS	COMMERCIAL VEHICLE SAFETY	*R -CH. SL 99-0330	03-04-99	04-07-99
H 304=	EARLE	CHILD CARE SUBSIDY FRAUD	R -CH. SL 99-0279	04-05-99	04-12-99
H 331=	BOWIE	SENTENCING SERVICES PROGRAM	*R -CH. SL 99-0306	03-04-99	03-23-99
H 409	SAUNDERS	TRAFFIC CAMERAS OK'D STATEWIDE	HF-FAILED 2ND READING	03-29-99	04-14-99
H 426	JARRELL	LOCAL RED LIGHT CAMERAS	*R -CH. SL 99-0181	03-29-99	04-08-99
H 477=	JEFFUS	COMMUNITY COLLEGE CAMPUS POLICE	R -CH. SL 99-0068	04-07-99	04-13-99
H 514=	SAUNDERS	LOCAL PHOTO ENFORCEMENT	*R -CH. SL 99-0182	03-22-99	04-08-99
H 572	EDWARDS	GREENVILLE RED LIGHT CAMERAS	H -RE-REF COM ON JUDICIV	03-24-99	04-08-99
H 572	EDWARDS	GREENVILLE RED LIGHT CAMERAS	H -RE-REF COM ON JUDICIV	04-12-99	
H 604	THOMAS	CLARIFY ATTY-IN-FACT GIFTS	R -CH. SL 99-0385	03-25-99	04-08-99
H 628=	ALEXANDER	CHARLOTTE SCHOOL ZONE SPEED CAMERAS	H -REF TO COM ON JUDICIV	03-29-99	
H 786	HAIRE	COMMERCIAL FELONY DEATH BY VEHICLE	*HF-FAILED 2ND READING	04-01-99	04-23-99
H 979	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	H -PRES. TO GOV. 07-10	04-12-99	04-20-99

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 IV Valid Through 31-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 980=	BADDOUR	WORKERS' COMP./THIRD PARTY ACTIONS	*R -CH. SL 99-0194	04-12-99	04-20-99
H1033	CULPEPPER	APPELLATE JUDGE ELECTIONS	H -REF TO COM ON JUDICIV	04-14-99	
H1082	SAUNDERS	LICENSING SELLING OF CARS	*S -REF TO COM ON FINANCE	04-15-99	05-13-99
H1100	HAIRE	REMOVAL/RESIGNATION OF TRUSTEES	*S -REF TO COM ON JUDICII	04-15-99	04-20-99
H1204	CULPEPPER	RESTORE DL AFTER FOREIGN JUDGEMENTS	S -RE-REF COM ON ED/HIED	04-15-99	04-27-99
H1207	CULPEPPER	ELIGIBILITY FOR STATE HEALTH BENEFIT	HF-POSTPONED INDEFINITELY	04-15-99	04-27-99
H1216	BADDOUR	JUVENILE JUSTICE TECHNICAL CORRECTIO	*R -CH. SL 99-0423	04-15-99	04-20-99
H1219	BADDOUR	PRETRIAL RELEASE & BOND	H -REF TO COM ON JUDICIV	04-15-99	
H1221	BADDOUR	DA DISCRETION/CAPITAL CASE	H -REF TO COM ON JUDICIV	04-15-99	
H1222=	BADDOUR	STATE JUDICIAL COUNCIL/FUNDS	*R -CH. SL 99-0390	04-15-99	05-26-99
H1223=	**BADDOUR**	**SUPREME COURT RULE MAKING/FUNDS**	**H -REF TO COM ON JUDICIV**	**04-15-99**	
H1224=	BADDOUR	EXPAND MAGISTRATES' AUTHORITY	*H -RE-REF COM ON JUDICIV	04-15-99	04-26-99
H1224=	BADDOUR	EXPAND MAGISTRATES' AUTHORITY	*H -RE-REF COM ON JUDICIV	04-28-99	
H1225=	**BADDOUR**	**REORG. SUP. CT. DIVISIONS/PILOT FUND**	**H -REF TO COM ON JUDICIV**	**04-15-99**	
H1263	THOMAS	RECOG. FEDERALLY ISSUED LICENSES	R -CH. SL 99-0276	04-15-99	04-22-99
H1285=	BRASWELL	PROHIBIT PREDATORY LENDING	H -RE-REF COM ON JUDICIV	06-29-99	
H1591=	CULPEPPER	REVISE ARTICLE 9 OF UCC	H -REF TO COM ON JUDICIV	00-05-18	
H1607=	**CULPEPPER**	**MODERNIZE BAIL BOND FORFEITURES**	***R -CH. SL 00-0133**	**00-05-18**	**00-06-28**
H1608=	CULPEPPER	AMEND BAIL BONDSMEN AND RUNNERS LAW	*H -PRES. TO GOV. 07-14	00-05-18	00-06-27
H1609=	EARLE	CLARIFY JUVENILE PROCEDURES	*H -PRES. TO GOV. 07-10	00-05-18	00-06-06
H1609=	EARLE	CLARIFY JUVENILE PROCEDURES	*H -PRES. TO GOV. 07-10	00-06-15	00-06-22
H1610=	EARLE	TEMP. CUSTODY-HEALTH CARE PROVIDER	H -REF TO COM ON JUDICIV	00-05-18	
H1616=	HAIRE	ABANDONED INFANT PROTECTION ACT	H -REF TO COM ON JUDICIV	00-05-18	
H1634=	EARLE	GUARDIANSHIP REVISIONS	*S -REF TO COM ON JUDICII	00-05-18	00-06-06
H1637=	NESBITT	VIOLENT CAREGIVER CHANGES	H -REF TO COM ON JUDICIV	00-05-18	
H1666	MILLER G	DURHAM STATUTE OF LIMITATIONS	*H -RE-REF COM ON JUDICIV	00-06-07	
H1742	BADDOUR	CLERKS OF COURT LONGEVITY	HF-POSTPONED INDEFINITELY	00-05-25	00-06-26
H1787=	BLACK	MECKLENBURG/FUNDING FOR SYSTEM	H -REF TO COM ON JUDICIV	00-05-25	
H1796=	CULPEPPER	CONVENIENCE FEE FOR COURT RECORDS	H -RE-REF COM ON FINANCE	00-05-25	00-05-31
H1804=	BADDOUR	ESTABLISH JUVENILE DEPARTMENT	*R -CH. SL 00-0137	00-05-25	00-06-05

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 IV Valid Through 31-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 12	ODOM	JUDICIAL APPT./VOTER RETENTION	*HF-FAILED 2ND READING	05-03-99	06-22-99
S 25=	WELLONS	GUARDIAN AD LITEM/ATTYS	R -CH. SL 99-0432	07-05-99	07-08-99
S 57=	COOPER	LOSE CONTROL LOSE YOUR LICENSE	R -CH. SL 99-0243	03-02-99	06-21-99
S 128=	HARTSELL	INTEREST ON MONEY JUDGMENTS	*R -CH. SL 99-0384	04-05-99	05-06-99
S 176=	HARTSELL	SLAYER/FORFEITURE OF PROP. RIGHTS	*R -CH. SL 99-0296	04-22-99	06-30-99
S 178=	HARTSELL	UNIFORM PRUDENT INVESTOR ACT	*R -CH. SL 99-0215	04-05-99	05-17-99
S 245=	HARTSELL	LETTERS OF CREDIT UCC REWRITE	*R -CH. SL 99-0073	04-22-99	05-04-99
S 246=	HARTSELL	APPEAL OR TRANSFER FROM CLERK	*R -CH. SL 99-0216	04-22-99	05-13-99
S 272	ODOM	LOCAL PHOTO ENFORCEMENT	H -RE-REF COM ON FINANCE	04-01-99	05-18-99
S 292	BALLANCE	SUP. CT. CRIM. CASE DOCKETING	R -CH. SL 99-0428	05-03-99	06-29-99
S 329	HAGAN	NEW LAPSE STATUTE	*R -CH. SL 99-0145	04-05-99	05-13-99
S 398	SHAW R	GREENSBORO RED LIGHT CAMERAS	*H -REF TO COM ON JUDICIV	04-14-99	
S 526	HAGAN	MOD. AND TERM. OF IRREVOCABLE TRUSTS	*R -CH. SL 99-0266	04-23-99	06-14-99
S 563=	DANNELLY	CHARLOTTE SCHOOL ZONE SPEED CAMERAS	*H -REF TO COM ON JUDICIV	04-15-99	
S 690	DALTON	DISTRICT COURT ELECTIONS NONPARTISAN	HF-POSTPONED INDEFINITELY	04-15-99	06-30-99
S 800	RAND	EN BANC PROCEDURE	HF-POSTPONED INDEFINITELY	04-28-99	06-08-99
S 871	REEVES	DECEDENTS' ESTATES/FUNERAL EXPENSES	*R -CH. SL 99-0166	04-23-99	05-18-99
S 974	SOLES	VACATION RENTAL ACT	*R -CH. SL 99-0420	04-28-99	06-30-99
S1005	HOYLE	YEAR 2000 LIABILITY LIMITATIONS	*R -CH. SL 99-0295	04-29-99	06-16-99
S1025=	**CLODFELTER**	**REORG. SUP. CT. DIVISIONS/PILOT FUND**	***R -CH. SL 99-0396**	**07-05-99**	**07-08-99**
S1026=	**CLODFELTER**	**SUPREME COURT RULES MAKING/FUNDS**	***H -REF TO COM ON JUDICIV**	**07-06-99**	
S1055	WELLONS	CERTAIN COURT REPORT SERVICES	*R -CH. SL 99-0264	04-29-99	06-14-99
S1149=	COOPER	PROHIBIT PREDATORY LENDING	*R -CH. SL 99-0332	06-30-99	07-06-99
S1340=	WELLONS	GUARDIANSHIP REVISIONS	*R -CH. SL 00-0124	00-06-12	00-06-22

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

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 1, 2000
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 1804 Establish Juvenile Department
Sponsor: Rep. Baddour

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 1, 2000 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, June 1, 2000, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, McMahan, Saunders, Weiss, Dedmon, and Hackney. Robin Johnson and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and welcomed Rep. Jennifer Weiss and Robin Johnson to the committee. Rep. Weiss has been appointed to serve the reminder of Rep. Jane Mosley's term, and Robin Johnson has replaced Tim Hovis as Committee Counsel. He then introduced the Pages, and called for consideration of the following bill:

HB 1804 Establish Juvenile Department. Rep. Baddour, bill sponsor, asked Rep. Haire to take the chair while the committee considered the bill. Rep. Saunders moved to adopt the new proposed committee substitute for purposes of discussion. Motion passed. Rep. Baddour was recognized to explain the bill. He gave an overview of the current operations of the Office of Juvenile Justice, and briefly explained how the idea for a separate cabinet level department was developed. The Chair then recognized, Chief George Sweat, Director of the Office of Juvenile Justice, for comments on the bill. Chief Sweat emphasized that the establishment of a new department would bring juvenile justice to a new level in North Carolina. Rep. McMahan asked specific questions about the operation of such a department, and Chief Sweat noted that the office would remain at the same location and would operate on the same budget. Rep. Justus questioned whether or not other states have stand-alone departments. Chief Sweat responded by noting that 22 other states have such a department. Rep. Saunders moved for a favorable report as to committee substitute bill unfavorable as to original bill, and recommendation that the bill be re-referred to the Committee on Appropriations. Motion carried unanimously.

The meeting adjourned at 10:35 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

2000 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1804 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL 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, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Appropriations.

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

☐ 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)

5/25/00

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1804*
Proposed Committee Substitute H1804-PCSA250-RH001

Short Title: Establish Juvenile Department. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. CREATION OF DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

Section 1.(a) Article 3C of Chapter 147 of the General Statutes is repealed.

Section 1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12.

"Department of Juvenile Justice and Delinquency Prevention.

"Part 1. Creation of Department.

"§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

There is hereby created and constituted a department to be known as the 'Department of Juvenile Justice and Delinquency Prevention', with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article.

"§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention.

"Part 2. General Provisions.

"**§ 143B-513. Definitions.**

In this Article, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.

(2) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(3) County Councils. -- Juvenile Crime Prevention Councils created under G.S. 143B-529.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(8) Department. -- The Department of Juvenile Justice and Delinquency Prevention.

(9) Detention. -- The secure confinement of a juvenile under a court order.

(10) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(11) District. -- Any district court district as established by G.S. 7A-133.

(12) Judge. -- Any district court judge.

(13) Judicial district. -- Any district court district as established by G.S. 7A-133.

(14) Juvenile. -- Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(15) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

(16) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the Department for placement in a training school.

(17) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(18) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(19) Secretary. -- The Secretary of Juvenile Justice and Delinquency Prevention.

(20) State Council. -- The State Advisory Council on Juvenile Justice and Delinquency Prevention established under G.S. 143B-536.

(21) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department.

(22) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly

disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

"**§ 143B-514. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.**

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that training schools be phased out as populations diminish.

(2) Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of that training school to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing training schools, provided the Advisory Budget Commission reviews this action.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision

services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding on a matching basis juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate

professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

"§ 143B-515. Authority to contract with other entities.

(a) The Department may contract with any governmental agency, person, or association for the accomplishment of its duties and responsibilities. The expenditure of funds under these contracts shall be for the purposes for which the funds were appropriated and not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program. As a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services under the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements.

"**§ 143B-516. Authority to assist private nonprofit foundations.**

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation that works directly with the Department's services or programs and whose sole purpose is to support these services and programs. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation.

"**§ 143B-517. Annual report.**

On or before April 1 each year, beginning with the year 2001, the Department shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Department, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Department shall submit the report to the various State agencies providing services to juveniles.

"Part 3. Juvenile Facilities.

"**§ 143B-518. Juvenile facilities.**

In order to provide any juvenile in a juvenile facility with appropriate treatment according to that juvenile's need, the Department shall be responsible for the administration of statewide educational, clinical, psychological, psychiatric, social, medical, vocational, and recreational services or programs.

"**§ 143B-519. Authority to provide necessary medical or surgical care.**

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department; however, no surgical operation may be performed except as authorized in G.S. 148-22.2.

"**§ 143B-520. Compensation to juveniles in care.**

A juvenile who has been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department may accept grants or funds from any source to compensate juveniles under this section.

"**§ 143B-521. Visits and community activities.**

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department. The visits shall begin after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile.

"§ 143B-522. Regional detention services.

The Department is responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties. The Department has discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities. The Department shall carefully plan the location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department.

"§ 143B-523. State subsidy to county detention facilities.

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The Department may vary the exact

funding formulas to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

"§ 143B-524. Authority for implementation.

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties that operate county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow the State to reimburse law enforcement officers or other appropriate employees of local government for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and accept gifts of funds from public or private sources.

"Part 4. Juvenile Court Services.

"§ 143B-525. Duties and powers of chief court counselors.

The chief court counselor in each district appointed under G.S. 143B-514(b)(15) may:

(1) Appoint court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.

(3) Provide in-service training for staff as required by the Department.

(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

"§ 143B-526. Duties and powers of juvenile court counselors.

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for any information concerning a case that the court may require before, during, or after the hearing.

(2) Prepare written reports for the use of the court.

(3) Appear and testify at court hearings.

(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.

(5) Furnish each juvenile on probation or protective supervision and that juvenile's parents, guardian, or custodian with a written

statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.

(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.

(7) See that the juvenile complies with the conditions of probation or bring to the attention of the court any juvenile who violates the juvenile's probation.

(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.

(9) Keep any records of the juvenile's work as the court may require.

(10) Account for all funds collected from juveniles.

(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.

(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public or the juvenile, and when necessary to carry out the responsibilities of court counselors under this section and under Chapter 7B of the General Statutes.

(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.

(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.

(15) Assist in the development of post-release supervision and the supervision of juveniles.

(16) Have any other duties as the court may direct.

"Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

"§ 143B-527. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with County Councils for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The plan shall contain the following:

(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.

(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.

(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:

a. Early intervention programs and services.

b. In-home training and community-based family counseling and parent training.

c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.

d. Programs and activities offered before and after school hours.

e. Life and social skills training programs.

f. Classes or seminars that teach conflict resolution, problem solving, and anger management.

g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section.

"Part 6. Juvenile Crime Prevention Councils.

"§ 143B-528. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils.

"§ 143B-529. Creation; method of appointment; membership; chair and vice-chair.

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. The County Council shall consist of not more than 25 members and should include, if possible, the following:

(1) The local school superintendent, or that person's designee;

(2) A chief of police in the county;

(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) A person under the age of 21;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the County Council's membership as necessary to ensure that the members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council under subsection (a) of this section. The membership shall be representative of each participating county.

(c) The members of the County Council shall elect annually the chair and vice-chair.

"**§ 143B-530. Terms of appointment.**

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) were appointed for an initial term ending on June 30, 2000. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1.

"**§ 143B-531. Vacancies; removal.**

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance or nonfeasance as determined by the board of county commissioners.

"§ 143B-532. Meetings; quorum.

County Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members constitutes a quorum.

"§ 143B-533. Compensation of members.

Members of County Councils shall receive no compensation but may receive a per diem in an amount established by the board of county commissioners.

"§ 143B-534. Powers and duties.

(a) Each County Council shall review annually the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) Each County Council shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

(c) On an ongoing basis, each County Council shall:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs.

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding.

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem.

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments.

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families. These services may include court-ordered parenting responsibility classes.

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district.

"§ 143B-535. Funding for programs.

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards developed under this Part. The Department

shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. -- The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.

(2) Use a formula for the distribution of funds. -- A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. -- A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. -- Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section. The Department shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis.

"Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-536. Creation of Council; purpose; members; duties.**

(a) There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The State Council shall be located within the Department for organizational, budgetary, and administrative purposes.

(b) The purpose of the State Council is to review and advise the Department in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) The State Council shall consist of 20 members as follows:

(1) The Governor shall appoint five persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.

(2) The Chief Justice of the Supreme Court shall appoint four persons.

(3) The following persons, or their designees, shall serve ex officio:

a. The Governor.

b. The Chief Justice of the Supreme Court.

c. The President Pro Tempore of the Senate.

d. The Speaker of the House of Representatives.

e. The Director of the Administrative Office of the Courts.

f. The Superintendent of Public Instruction.

g. The Secretary of Administration.

h. The Secretary of Health and Human Services.

i. The Secretary of Correction.
j. The Secretary of Crime Control and Public Safety.
k. The President of The University of North Carolina.

(d) Initial members, other than ex officio members, who were appointed under former G.S. 147-33.70 and whose terms began January 1, 1999, shall serve for terms as follows:

(1) Three members appointed by the Governor shall serve for terms of two years and two members for terms of three years.

(2) Two members appointed by the Chief Justice of the Supreme Court shall serve for terms of two years and two members for terms of three years.

Thereafter, members, other than ex officio members, shall serve for two-year terms. There is no prohibition against initial members being reappointed.

(e) The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the State Council.

(f) A vacancy on the State Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) State Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) The chairs shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council is necessary for action to be taken by the Council.

"**§ 143B-537. Powers and duties of the Council.**

The State Council shall have the following powers and duties:

(1) Advise the Department in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.

(2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.

(3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission

under any federal grant program by any governmental entity of the State.

(4) Review the juvenile justice system's operation and prioritization of funding needs.

(5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.

(6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year.

(7) Review and comment on the proposed budget for the Department."

PART II. REVISIONS TO THE JUVENILE CODE.

Section 2. G.S. 7B-1501 reads as rewritten:

"**§ 7B-1501. Definitions.**

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(3) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(7a) Department. -- The Department of Juvenile Justice and Delinquency Prevention created under Article 12 of Chapter 143B of the General Statutes.

(8) Detention. -- The secure confinement of a juvenile under a court order.

(9) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(10) District. -- Any district court district as established by G.S. 7A-133.

(11) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(12) House arrest. -- A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.

(13) Intake counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(14) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.

(15) Judge. -- Any district court judge.

(16) Judicial district. -- Any district court district as established by G.S. 7A-133.

(17) Juvenile. -- Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(18) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

~~(19) Office. -- The Office of Juvenile Justice.~~

(20) Petitioner. -- The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

(21) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the ~~Office~~ Department for placement in a training school.

(22) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(23) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(24) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(25) Teen court program. -- A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

(26) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the ~~Office of Juvenile Justice.~~ Department.

(27) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(28) Wilderness program. -- A rehabilitative residential treatment program in a rural or outdoor setting.

The singular includes the plural, unless otherwise specified."

Section 3. The Revisor of Statutes shall substitute the term "Department of Juvenile Justice and Delinquency Prevention" for the term "Office of Juvenile Justice" everywhere that term appears in the General Statutes, except for those sections of the General Statutes amended in this act. Except where the statutes specifically reference the Administrative Office of the Courts or the Office of Guardian Ad Litem Services, the Revisor of Statutes shall substitute the term "Department" for the term "Office" everywhere that term appears in Subchapters II and III of Chapter 7B of the General Statutes.

PART III. CONFORMING CHANGES TO THE GENERAL STATUTES.

Section 4.(a) G.S. 7A-302 reads as rewritten:

"**§ 7A-302. Counties and municipalities responsible for physical facilities.**

In each county in which a district court has been established, courtrooms, office space for juvenile court counselors and support staff as assigned by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and related judicial facilities (including furniture), as defined in this Subchapter, shall be provided by the county, except that courtrooms and related judicial facilities may, with the approval of the Administrative Officer of the Courts, after consultation with county and municipal authorities, be provided by a municipality in the county. To assist a county or municipality in meeting the expense of providing courtrooms and related judicial facilities, a part of the costs of court, known as the "facilities fee," collected for the State by the clerk of superior court, shall be remitted to the county or municipality providing the facilities."

Section 4.(b) G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11

State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1

Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

Section 4.(c) G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

Section 4.(d) G.S. 17C-3(a) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission," in the Department of Justice. The Commission shall be composed of 26 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Correction; the President of the Department of Community Colleges.

(3a) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

Section 4.(e) G.S. 20-79.5(a) reads as rewritten:

"(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representative	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17

Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	~~23-29~~ 24-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200".

Section 4.(f) G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments

or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility under G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 4.(g) G.S. 66-58(c)(7) reads as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors."

Section 4.(h) G.S. 114-19.6 reads as rewritten:

"**§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.**

(a) Definitions. -- As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil

Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the North Carolina Department of Justice may provide to the ~~Department or Office~~ requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the ~~Department or Office~~ requesting department shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall keep all information under this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information ~~the Department or Office~~ either department receives through the checking of the criminal history is privileged information and for the exclusive use of ~~the Department or Office.~~ that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction

shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

Section 4.(i) G.S. 114-21(b) reads as rewritten:

"(b) The ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section."

Section 4.(j) G.S. 115C-110 reads as rewritten:

"§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve any plans for special education and related services to those residents.

The Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency

Prevention. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on this Department ~~or Office~~ and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by this ~~Department or Office.~~ Department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;

(2) A procedure for diagnosis and evaluation of each child;

(3) An inventory of the personnel and facilities available to provide special education for these children;

(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;

(5) Standards for the education of children with special needs;

(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and

(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment under subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;

(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and

(3) Any other rules as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;

(2) A statement of the extent to which standards in force under G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and

(3) The means by which the agency will contract to provide, at levels meeting standards in force under G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and

(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children

with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall not prevent that Department ~~and Office~~ from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education."

Section 4.(k) G.S. 115C-111 reads as rewritten:

"**§ 115C-111. Free appropriate education for all children with special needs.**

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the local educational agency shall confer with the appropriate Department of Health and Human Services or ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend these nonresidential schools or programs and receive from them free appropriate public education."

Section 4.(l) G.S. 115C-113(f) reads as rewritten:

"(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human Services and the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent."

Section 4.(m) G.S. 115C-113.1 reads as rewritten:

"**§ 115C-113.1. Surrogate parents.**

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the ~~Office of Juvenile Justice,~~ Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

Section 4.(n) G.S. 115C-115 reads as rewritten:

"**§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.**

The board shall adopt rules and regulations to assure that:

(1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

(2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.

(3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost."

Section 4.(o) G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the

Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of the Department of Health and Human Services or the Secretary's designee;

(1a) A representative of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, appointed by the Governor;

(2) The Secretary of the Department of Correction or the Secretary's designee;

(3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and

(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

Section 4.(p) G.S. 115C-139(a) reads as rewritten:

"(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings under the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the ~~Office of Juvenile Justice or the~~ Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide

the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children."

Section 4.(q) G.S. 115C-250(a) reads as rewritten:

"(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The ~~Department~~ Departments of Health and Human Services, ~~the Office of Juvenile Justice, and the Department of~~ Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program."

Section 4.(r) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human ~~Services and Correction or the Office of Juvenile Justice~~ Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

Section 4.(s) G.S. 115D-1 reads as rewritten:

"**§ 115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the

issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission."

Section 4.(t) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided

further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

Section 4.(u) G.S. 120-216 reads as rewritten:

"**§ 120-216. Commission duties.**

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;
2. To children and youth in the juvenile court system; and
3. Provided by the Division of Social Services and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose."

Section 4.(v) G.S. 122C-3(13a) reads as rewritten:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;

2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority under G.S. 7B-903 for whom residential treatment or placement is recommended;

3. Minors who are placed in residential programs as a condition of probation under G.S. 7B-2506;

4. Minors who are ordered to a professional residential treatment program under G.S. 7B-2506; and

5. Minors committed to the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, under G.S. 7B-2506; and

c. For whom the State has not provided appropriate treatment and educational programs."

Section 4.(w) G.S. 122C-113(b1) reads as rewritten:

"(b1) The Secretary shall cooperate with the State Board of Education and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs."

Section 4.(x) G.S. 122C-117(a) reads as rewritten:

"(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;
(2) Provide services to clients in the catchment area, including clients committed to the custody of the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;
(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities;
(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
(6) Comply with federal requirements as a condition of receipt of federal grants; and
(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member."

Section 4.(y) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1

~~Office of Juvenile Justice~~
Department of Juvenile Justice and
Delinquency Prevention.....1
Board of Transportation.....1
Utilities Commission.....1
Department of Administration.....1
Clerk of the Supreme Court.....1
Clerk of the Court of Appeals.....1
Clerk of the Superior Court.....1 each
Department of Cultural Resources [State
Library].....5
Supreme Court Library.....2
Legislative Library.....1
Schools
All state-supported colleges and universities
in the State of North Carolina.....*1 each
Local Officials
Clerks of the Superior Courts.....1 each
Chief Building Inspector of each incorporated
municipality or county.....1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Section 4.(z) G.S. 143-166.2(d) reads as rewritten:

"(d) The term 'law-enforcement officer,' 'officer,' or 'fireman' shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the ~~Division of Youth Services of the Department of Health and Human Services.~~ Department of Juvenile Justice and Delinquency Prevention. The term 'firemen' shall mean both 'eligible fireman'; or 'fireman' as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term 'rescue squad worker' shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of

training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term 'rescue squad worker' shall mean a member of an ambulance service certified by the Department of Health and Human Services under Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term 'Civil Air Patrol members' shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified under G.S. 143B-491(a). The term 'fireman' shall also mean county fire marshals when engaged in the performance of their county duties. The term 'rescue squad worker' shall also mean county emergency services coordinators when engaged in the performance of their county duties."

Section 4.(aa) G.S. 143B-150.5(d) reads as rewritten:

"(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, ~~the Division of Youth Services,~~ the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this Part."

Section 4.(bb) G.S. 143B-150.7(b) reads as rewritten:

"(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;

(1a) One member representing the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;
(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;
(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;
(5) One member representing the schools of social work of The University of North Carolina;
(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and
(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 4.(cc) G.S. 143B-152.6 reads as rewritten:

"**§ 143B-152.6. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(dd) G.S. 143B-152.14 reads as rewritten:

"**§ 143B-152.14. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties,

shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(ee) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services."

Section 4.(ff) G.S. 143B-478 reads as rewritten:

"**§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.**

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 36 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services,

the Secretary of the Department of Correction, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the

Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: ~~the representative of the Office of Juvenile Justice,~~ the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed under subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the

Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4.(gg) G.S. 147-45 reads as rewritten:

"**§ 147-45. Distribution of copies of State publications.**

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0

Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources, Department of	6	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	3	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0

Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1

East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
Johnson C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point University	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.

Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Section 4.(hh) G.S. 131D-10.4 reads as rewritten:

"**§ 131D-10.4. Exemptions.**

This Article shall not apply to:

(1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;

(2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;

(3) Secure detention facilities as specified in ~~Article 3C of Chapter 147~~ Article 12 of Chapter 143B of the General Statutes;

(4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;

(5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;

(6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or

(7) Individuals who are related by blood, marriage, or adoption to the child."

Section 4.(ii) G.S. 153A-221.1 reads as rewritten:

"**§ 153A-221.1. Standards and inspections.**

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

~~The Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.~~

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail

with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 4.(jj) G.S. 164-40 reads as rewritten:

"**§ 164-40. Correction population simulation model; ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.**

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop ~~an Office of Juvenile Justice~~ a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, in second priority to the work of the Commission."

Section 4.(kk) G.S. 164-43 reads as rewritten:

"**§ 164-43. Priority of duties; reports; continuing duties.**

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established under G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on

these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed under G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated under G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill."

Section 4.(ll) G.S. 164-37(26) reads as rewritten:

"(26) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention."

Section 4.(mm) G.S. 143B-2 reads as rewritten:

"**§ 143B-2. Interim applicability of the Executive Organization Act of 1973.**

The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety

(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of ~~Commerce.~~ Commerce
(10) Department of Juvenile Justice and Delinquency Prevention."

Section 4.(nn) G.S. 143B-6 reads as rewritten:

"**§ 143B-6. Principal departments.**

In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Community Colleges System ~~Office.~~ Office
(11) Department of Juvenile Justice and Delinquency Prevention."

PART IV. EFFECTIVE DATE.

Section 5. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1804*

Short Title: Establish Juvenile Department. (Public)

Sponsors: Representatives Baddour; Barefoot, Blue, Bonner, Bridgeman, Cox, Crawford, Culpepper, Cunningham, Earle, Ford, Goodwin, Hackney, Haire, Hall, Hunter, Hurley, Insko, McAllister, McLawhorn, Melton, Miller, Redwine, Sossamon, Sutton, Thomas, Tolson, Wainwright, Warner, Warren, Weiss, and Yongue.

Referred to: Judiciary IV.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. CREATION OF DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

Section 1.(a) Article 3C of Chapter 147 of the General Statutes is repealed.

Section 1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12.

"Department of Juvenile Justice and Delinquency Prevention.

"Part 1. Creation of Department.

"**§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.**

There is hereby created and constituted a department to be known as the 'Department of Juvenile Justice and Delinquency Prevention' ('Department'), with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article.

"**§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.**

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer, as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention.

"Part 2. General Provisions.

"**§ 143B-513. Definitions.**

The definitions set forth in G.S. 7B-1501 apply to this Article, unless modified in this Article.

"**§ 143B-514. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.**

(a) The head of the Department of Juvenile Justice and Delinquency Prevention is the Secretary of the Department of Juvenile Justice and Delinquency Prevention. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy which requires that training schools be phased out as populations diminish.

(2) Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of any training school which is closed either to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other

appropriate programs, or to improve the efficiency of existing training schools, provided any such action is reviewed by the Advisory Budget Commission.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules and regulations to implement the provisions of this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State to provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards and approve yearly program evaluations and make recommendations to the General Assembly concerning continuation funding based on the evaluations.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding on a matching basis for juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under the provisions of this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services, and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district court district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles, including attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the functions, powers, duties, and obligations of every agency or division in the Department shall be prescribed by the Secretary of the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations, and may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-515. Authority to contract with other entities.**

(a) The Department may contract with any governmental agency, person, association, or corporation for the accomplishment of its duties and responsibilities provided that the expenditure of funds pursuant to these contracts shall be for the purposes for which the funds were appropriated and is not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program; and, as a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services pursuant to the provisions of the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements.

"**§ 143B-516. Authority to assist private nonprofit foundations.**

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation which works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to the provisions of Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation.

"**§ 143B-517. Annual report.**

On or before April 1 each year, beginning with the year 2001, the Department shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Department, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Department shall submit the report to the various State agencies providing services to juveniles.

"Part 3. Juvenile Facilities.

"**§ 143B-518. Juvenile facilities.**

The Department shall be responsible for administration of statewide programs to provide any juvenile in a juvenile facility with appropriate treatment according to the juvenile's needs, including educational, clinical and psychological, psychiatric, social, medical, vocational, and recreational services or programs.

"§ 143B-519. Authority to provide necessary medical or surgical care.

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department, provided that no surgical operation may be performed except as authorized in G.S. 148-22.2.

"§ 143B-520. Compensation to juveniles in care.

Juveniles who have been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department is authorized to accept grants or funds from any source to compensate juveniles as provided under this section.

"§ 143B-521. Visits and community activities.

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department, after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile.

"§ 143B-522. Regional detention services.

The Department shall be responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties, except that the Department shall have discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and

juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities, including careful planning on location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department.

"**§ 143B-523. State subsidy to county detention facilities.**

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The exact funding formulas may be varied by the Department to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

"**§ 143B-524. Authority for implementation.**

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties operating county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow law enforcement officers or other appropriate employees of local government to be reimbursed by the State for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and to accept gifts of funds from public or private sources.

"Part 4. Juvenile Court Services.

"**§ 143B-525. Duties and powers of chief court counselors.**

The chief court counselor in each district court district appointed as provided by this Article may:

(1) Appoint court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district court district.
(3) Provide in-service training for staff as required by the Department.
(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

"**§ 143B-526. Duties and powers of juvenile court counselors.**

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for such information concerning a case as the court may require before, during, or after the hearing.
(2) Prepare written reports for the use of the court.
(3) Appear and testify at court hearings.
(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.
(5) Furnish each juvenile on probation or protective supervision and the juvenile's parents, guardian, or custodian with a written statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.
(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.
(7) See that the conditions of probation are complied with by the juvenile, or bring any juvenile who violates the juvenile's probation to the attention of the court.
(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.
(9) Keep any records of the juvenile's work as the court may require.
(10) Account for all funds collected from juveniles.
(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.
(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public, or the juvenile, and necessary to carry out the responsibilities of court counselors under this section and under Chapter 7B of the General Statutes.
(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.
(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide

supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.

(15) Assist in the development of post-release supervision and the supervision of juveniles.

(16) Have any other duties as the court may direct.

"Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

"§ 143B-527. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with county Juvenile Crime Prevention Councils, as provided in G.S. 143B-528, for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The Department shall ensure that the plan contains the following:

(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.

(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.

(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:

a. Early intervention programs and services.

b. In-home training and community-based family counseling and parent training.

c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.

d. Programs and activities offered before and after school hours.

e. Life and social skills training programs.

f. Classes or seminars that teach conflict resolution, problem solving, and anger management.

g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section.

"Part 6. Juvenile Crime Prevention Councils.

"§ 143B-528. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils.

"**§ 143B-529. Creation; method of appointment; membership; chair and vice-chair.**

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. The Juvenile Crime Prevention Council shall consist of not more than 25 members and should include, if possible, the following:

(1) The local school superintendent(s), or that person's designee(s);
(2) A chief of police in the county;
(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) A person under the age of 21;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a district court judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the Council's membership as necessary to ensure that Council members reflect the racial and socioeconomic

diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council pursuant to subsection (a) of this section. The membership shall be representative of each participating county.

(c) The chair and vice-chair shall be elected annually by the members of the Council.

"**§ 143B-530. Terms of appointment.**

Each member of a Juvenile Crime Prevention Council shall serve for a term of two years, except for initial terms as provided in this section. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) were appointed for an initial term ending on June 30, 2000. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001 and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1.

"**§ 143B-531. Vacancies; removal.**

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance, or nonfeasance as determined by the board of commissioners of the county.

"**§ 143B-532. Meetings; quorum.**

Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members shall constitute a quorum.

"**§ 143B-533. Compensation of members.**

Members of Juvenile Crime Prevention Councils shall receive no compensation but may receive a per diem in such an amount as may be established by the board of commissioners of the county.

"**§ 143B-534. Powers and duties.**

(a) The Councils shall annually review the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of commissioners of the county for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) The Councils shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community level sanctions for court-adjudicated juveniles pursuant to minimum standards adopted by the Department.

(c) The Councils shall perform the following functions on an ongoing basis:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs;

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding;

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem;

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments;

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families, including court-ordered parenting responsibility classes; and

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district.

"**§ 143B-535. Funding for programs.**

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards as developed under the provisions of this Part. The Department shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. -- The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded;

(2) Use a formula for the distribution of funds. -- A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternatives services to juveniles in their communities;

(3) Allow and encourage local flexibility. -- A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternatives funds; and

(4) Combine resources. -- Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section, and the Department shall provide technical assistance to Juvenile Crime Prevention Councils and shall ensure that the Juvenile Crime Prevention Councils evaluate all State-funded programs and services on an ongoing and regular basis.

"Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-536. Creation of Council; purpose; members; duties.**

(a) There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The Council shall be located within the Department of Juvenile Justice and Delinquency Prevention for organizational, budgetary, and administrative purposes.

(b) The purpose of the Council is to review and advise the Department in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) The Council shall consist of 20 members as follows:

(1) Five persons appointed by the Governor, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.

(2) Four persons appointed by the Chief Justice of the Supreme Court.

(3) The following persons, or their designees, ex officio:

a. The Governor.

b. The Chief Justice of the Supreme Court.

c. The President Pro Tempore of the Senate.

d. The Speaker of the House of Representatives.

e. The Director of the Administrative Office of the Courts.

f. The Superintendent of Public Instruction.

g. The Secretary of the Department of Administration.

h. The Secretary of the Department of Health and Human Services.

i. The Secretary of the Department of Correction.

j. The Secretary of the Department of Crime Control and Public Safety.

k. The President of The University of North Carolina.

(d) Initial members, other than ex officio members, which were appointed pursuant to former G.S. 147-33.70 and whose terms began January 1, 1999, shall serve for terms as follows:

(1) Three members appointed by the Governor shall serve for terms of two years and two members for terms of three years.

(2) Two members appointed by the Chief Justice of the Supreme Court shall serve for terms of two years and two members for terms of three years.

Thereafter, members, other than ex officio members, shall serve for two-year terms. There is no prohibition against initial members being reappointed.

(e) The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the Council.

(f) A vacancy on the Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) The Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) The chair shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council shall be necessary for action to be taken by the Council.

"**§ 143B-537. Powers and duties of the Council.**

The Council shall have the following powers and duties:

(1) Advise the Department in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.

(2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.

(3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission under any federal grant program by any governmental entity of the State.

(4) Review the juvenile justice system's operation and prioritization of funding needs.

(5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.

(6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year.

(7) Review and comment on the proposed budget for the Department."

PART II. REVISIONS TO THE JUVENILE CODE.

Section 2. G.S. 7B-1501 reads as rewritten:

"**§ 7B-1501. Definitions.**

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(3) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(7a) Department. -- The North Carolina Department of Juvenile Justice and Delinquency Prevention created pursuant to Article 12 of Chapter 143B of the General Statutes.

(8) Detention. -- The secure confinement of a juvenile pursuant to a court order.

(9) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(10) District. -- Any district court district as established by G.S. 7A-133.

(11) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(12) House arrest. -- A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.

(13) Intake counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(14) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.

(15) Judge. -- Any district court judge.

(16) Judicial district. -- Any district court district as established by G.S. 7A-133.

(17) Juvenile. -- Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(18) Juvenile court. -- Any district court exercising jurisdiction pursuant to this Chapter.

~~(19) Office. -- The Office of Juvenile Justice.~~

(20) Petitioner. -- The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

(21) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the ~~Office~~ Department for placement in a training school.

(22) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(23) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(24) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(25) Teen court program. -- A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

(26) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the ~~Office of Juvenile Justice.~~ Department.

(27) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly

disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(28) Wilderness program. -- A rehabilitative residential treatment program in a rural or outdoor setting.

The singular includes the plural, unless otherwise specified."

Section 3. The Revisor of Statutes shall substitute the term "Department of Juvenile Justice and Delinquency Prevention" for the term "Office of Juvenile Justice" everywhere that term appears in the General Statutes, except for those sections of the General Statutes amended in this act. Except where the statutes specifically reference the Administrative Office of the Courts or the Office of Guardian ad Litem Services, the Revisor of Statutes shall substitute the term "Department" for the term "Office" everywhere that term appears in Subchapters II and III of Chapter 7B of the General Statutes.

PART III. CONFORMING CHANGES TO THE GENERAL STATUTES.

Section 4.(a) G.S. 7A-302 reads as rewritten:

"**§ 7A-302. Counties and municipalities responsible for physical facilities.**

In each county in which a district court has been established, courtrooms, office space for juvenile court counselors and support staff as assigned by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and related judicial facilities (including furniture), as defined in this Subchapter, shall be provided by the county, except that courtrooms and related judicial facilities may, with the approval of the Administrative Officer of the Courts, after consultation with county and municipal authorities, be provided by a municipality in the county. To assist a county or municipality in meeting the expense of providing courtrooms and related judicial facilities, a part of the costs of court, known as the "facilities fee," collected for the State by the clerk of superior court, shall be remitted to the county or municipality providing the facilities."

Section 4.(b) G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1

Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1

University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

Section 4.(c) G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the ~~Office of~~

~~Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

Section 4.(d) G.S. 17C-3(a) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission," in the Department of Justice. The Commission shall be composed of 26 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Correction; the President of the Department of Community Colleges.

(3a) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

Section 4.(e) G.S. 20-79.5(a) reads as rewritten:

"(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representative	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17
Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	~~23-29~~ 24-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53

Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200".

Section 4.(f) G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to the comprehensive student health services or the comprehensive

student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the

Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 4.(g) G.S. 66-58(c)(7) reads as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors."

Section 4.(h) G.S. 114-19.6 reads as rewritten:

"**§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.**

(a) Definitions. -- As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the North Carolina Department of Justice may provide to the ~~Department or Office~~ requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the ~~Department or Office~~ requesting department shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered

applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information ~~the Department or Office~~ either department receives through the checking of the criminal history is privileged information and for the exclusive use of ~~the Department or Office.~~ that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

Section 4.(i) G.S. 114-21(b) reads as rewritten:

"(b) The ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section."

Section 4.(j) G.S. 115C-110 reads as rewritten:

"**§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.**

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve any plans for special education and related services to those residents.

The Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on this Department ~~or Office~~ and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by this ~~Department or Office.~~ Department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;

(2) A procedure for diagnosis and evaluation of each child;

(3) An inventory of the personnel and facilities available to provide special education for these children;

(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;

(5) Standards for the education of children with special needs;

(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and

(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment pursuant to subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;

(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and

(3) Any other rules as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;
(2) A statement of the extent to which standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and
(3) The means by which the agency will contract to provide, at levels meeting standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and
(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall not prevent that Department ~~and Office~~ from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be

submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education."

Section 4.(k) G.S. 115C-111 reads as rewritten:

"**§ 115C-111. Free appropriate education for all children with special needs.**

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the local educational agency shall confer with the appropriate Department of Health and Human Services or ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in said

program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend these nonresidential schools or programs and receive from them free appropriate public education."

Section 4.(l) G.S. 115C-113(f) reads as rewritten:

"(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human Services and the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent."

Section 4.(m) G.S. 115C-113.1 reads as rewritten:

"**§ 115C-113.1. Surrogate parents.**

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the ~~Office of Juvenile Justice,~~ Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

Section 4.(n) G.S. 115C-115 reads as rewritten:

"**§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.**

The board shall adopt rules and regulations to assure that:

(1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

(2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.

(3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost."

Section 4.(o) G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of the Department of Health and Human Services or the Secretary's designee;
(1a) A representative of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, appointed by the Governor;
(2) The Secretary of the Department of Correction or the Secretary's designee;
(3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and
(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

Section 4.(p) G.S. 115C-139(a) reads as rewritten:

"(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings pursuant to the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the ~~Office of Juvenile Justice or the~~ Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children."

Section 4.(q) G.S. 115C-250(a) reads as rewritten:

"(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115.

At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The ~~Department~~ Departments of Health and Human Services, ~~the Office Juvenile Justice, and the Department of~~ Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program."

Section 4.(r) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human ~~Services and Correction or the Office of Juvenile Justice~~ Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

Section 4.(s) G.S. 115D-1 reads as rewritten:

"**§ 115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission."

Section 4.(t) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

Section 4.(u) G.S. 120-216 reads as rewritten:

"**§ 120-216. Commission duties.**

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;

2. To children and youth in the juvenile court system; and

3. Provided by the Division of Social Services and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose."

Section 4.(v) G.S. 122C-3(13a) reads as rewritten:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are

presented for admission and denied due to their behaviors or handicapping conditions;

2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to G.S. 7B-903 for whom residential treatment or placement is recommended;

3. Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7B-2506;

4. Minors who are ordered to a professional residential treatment program pursuant to G.S. 7B-2506; and

5. Minors committed to the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, pursuant to G.S. 7B-2506; and

c. For whom the State has not provided appropriate treatment and educational programs."

Section 4.(w) G.S. 122C-113(b1) reads as rewritten:

"(b1) The Secretary shall cooperate with the State Board of Education and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs."

Section 4.(x) G.S. 122C-117(a) reads as rewritten:

"(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;

(2) Provide services to clients in the catchment area, including clients committed to the custody of the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;

(6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member."

Section 4.(y) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Clerk of the Superior Court	1 each
Department of Cultural Resources [State	

Library] 5
Supreme Court Library 2
Legislative Library 1
Schools
All state-supported colleges and universities
in the State of North Carolina ..... *1 each
Local Officials
Clerks of the Superior Courts ..... 1 each
Chief Building Inspector of each incorporated
municipality or county 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Section 4.(z) G.S. 143-166.2(d) reads as rewritten:

"(d) The term 'law-enforcement officer,' 'officer,' or 'fireman' shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the ~~Division of Youth Services of the Department of Health and Human Services.~~ Department of Juvenile Justice and Delinquency Prevention. The term 'firemen' shall mean both 'eligible fireman'; or 'fireman' as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term 'rescue squad worker' shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term 'rescue squad worker' shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term 'Civil Air Patrol members' shall mean those senior members of the North Carolina Wing-Civil Air

Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term 'fireman' shall also mean county fire marshals when engaged in the performance of their county duties. The term 'rescue squad worker' shall also mean county emergency services coordinators when engaged in the performance of their county duties."

Section 4.(aa) G.S. 143B-150.5(d) reads as rewritten:

"(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, ~~the Division of Youth Services,~~ the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this Part."

Section 4.(bb) G.S. 143B-150.7(b) reads as rewritten:

"(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;

(1a) One member representing the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;

(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;

(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;

(5) One member representing the schools of social work of The University of North Carolina;

(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and

(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 4.(cc) G.S. 143B-152.6 reads as rewritten:

"**§ 143B-152.6. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(dd) G.S. 143B-152.14 reads as rewritten:

"**§ 143B-152.14. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(ee) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services."

Section 4.(ff) G.S. 143B-478 reads as rewritten:

"§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 36 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: ~~the representative of the Office of Juvenile Justice,~~ the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4.(gg) G.S. 147-45 reads as rewritten:

"**§ 147-45. Distribution of copies of State publications.**

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources, Department of	6	0

Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	3	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.

State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1

North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
Johnson C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point University	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0

Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Section 4.(hh) G.S. 131D-10.4 reads as rewritten:

"**§ 131D-10.4. Exemptions.**

This Article shall not apply to:

(1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states

which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;

(2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;

(3) Secure detention facilities as specified in ~~Article 3C of Chapter 147~~ Article 12 of Chapter 143B of the General Statutes;

(4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;

(5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;

(6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or

(7) Individuals who are related by blood, marriage, or adoption to the child."

Section 4.(ii) G.S. 153A-221.1 reads as rewritten:

"**§ 153A-221.1. Standards and inspections.**

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

~~The Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.~~

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 4.(jj) G.S. 164-40 reads as rewritten:

"**§ 164-40. Correction population simulation model; ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.**

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop ~~an Office of Juvenile Justice~~ a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, in second priority to the work of the Commission."

Section 4.(kk) G.S. 164-43 reads as rewritten:

"**§ 164-43. Priority of duties; reports; continuing duties.**

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it

shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed pursuant to G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill."

Section 4.(ll) G.S. 164-37(26) reads as rewritten:

"(26) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention."

PART IV. EFFECTIVE DATE.

Section 5. This act becomes effective July 1, 2000.

HOUSE BILL 1804:
Establish Juvenile Department

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Representative Baddour
Date:	June 1, 2000	**Summary by:**	Robin S. Johnson
Version:	H1804-CSRH-001		Committee Counsel

SUMMARY: ***The PCS for House Bill 1804 makes technical changes to the original bill. The bill would transfer existing functions of the Office of Juvenile Justice in the Office of the Governor to a new Department of Juvenile Justice and Delinquency Prevention. The bill also would make technical and conforming changes to the Juvenile Code and other statutes. The bill would take effect July 1, 2000.***

BACKGROUND: Created January 1, 1999, as part of the Juvenile Justice Reform Act ("Act"), the Office of Juvenile Justice ("Office") is currently established within the Office of the Governor. The Act merged into the new Office all juvenile justice responsibilities and all personnel, funds, duties, and facilities relative to juvenile justice that had been split between the Division of Youth Services in the Department of Health and Human Services and the Division of Juvenile Services in the Administrative Office of the Courts. The Act continued to require counties to provide office space for juvenile court counselors and support staff as assigned by the new Office.

The Act directed the Governor to submit, by April 1, 2000, to the General Assembly for its approval a plan for permanent placement of these juvenile justice responsibilities. The Governor's plan recommends the creation of a cabinet-level juvenile justice agency, consolidates juvenile crime prevention and intervention programs, and coordinates State and local services.

BILL ANALYSIS:

Section 1(a) repeals Article 3C, *Office of Juvenile Justice,* of Chapter 147 of the General Statutes.

Section 1(b) creates a new Article 12, *Department of Juvenile Justice and Delinquency Prevention*, in Chapter 143B of the General Statutes. In essence, all provisions of *Office of Juvenile Justice* are recodified into this new Article.

Sections 2 and 3 make conforming changes to the Juvenile Code.

Section 4 makes conforming changes to other statutes.

Section 5 provides that the bill would take effect July 1, 2000.

H1804-SMRH-001

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

JAMES B. HUNT JR.
GOVERNOR

NC SCHOOLS FIRST IN AMERICA 2010

April 1, 2000

Honorable Marc Basnight
Honorable James Black
General Assembly
Legislative Building
Raleigh, NC 27601

Dear Senator Basnight and Speaker Black:

Enclosed please find a copy of the Plan of Reorganization for the North Carolina Juvenile Justice System as required by The Juvenile Justice Reform Act, S.L. 1998-202 (1260).

This report contains the proposed organization structure for the new department, the programs and funds to move, and the proposed budget for Fiscal Year 2001.

Should you need any further information, please let me know.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

JBH/ale

Governor James B. Hunt Jr.'s Report to the Legislature

The Plan of Reorganization for the North Carolina Juvenile Justice System

April 1, 2000

"A new North Carolina Department of Juvenile Justice and Delinquency Prevention will reflect North Carolina's best effort to make communities safe, to give every child an opportunity to succeed, and to maximize resources to keep our state focused on youth." Governor James B. Hunt Jr.

Table of Contents

I. Executive Summary

II. Establishing New Department of Juvenile Justice and Delinquency Prevention

III. Programs and Funds to Move into New Department

IV. Organizational Structure of the New Department

V. The Proposed Budget for Fiscal Year 2001

VI. Legislative Proposals

VII. Analysis of Alternative Organizational Structures

Part I

Executive Summary

Plan to Establish a Department of Juvenile Justice and Delinquency Prevention

Fighting juvenile crime is a top priority of the Hunt Administration. In 1998, in response to rising juvenile crime rates, Governor Jim Hunt signed into law the Juvenile Justice Reform Act, his plan to overhaul the state's juvenile justice system based on recommendations of the Governor's Commission on Juvenile Crime and Justice. The legislation created more effective prevention for children; stronger efforts to get troubled youth back on track; tougher, more effective punishment; and a more efficient juvenile justice system.

In 1999, the General Assembly continued to support Governor Hunt's overhaul of the juvenile justice system by boosting local community prevention efforts and establishing the new Office of Juvenile Justice. One hundred Juvenile Crime Prevention Councils have been established to help counties develop juvenile crime prevention strategies; and the Office of Juvenile Justice (OJJ), led by former Winston-Salem Police Chief George Sweat, was established to coordinate all state efforts.

OJJ is charged with coordinating juvenile justice and delinquency prevention strategies; helping community leaders in all 100 counties develop juvenile crime prevention plans; and implementing new tougher laws to change the way young offenders are sentenced. Currently, OJJ oversees the state's juvenile court offices, training schools, detention centers, Juvenile Crime Prevention Councils (JCPCs), and after-school mentoring programs. OJJ was created through merging the Division of Youth Services in the Department of Health and Human Services and the Juvenile Services Division in the Administrative Office of the Courts and is temporarily housed in the Office of the Governor.

In 1998, as part of the Juvenile Justice Reform Act, the Governor called for the establishment of a single cabinet level agency to fight crime and step up prevention efforts. The General Assembly asked the Governor to provide a detailed plan for reorganizing of the Office of Juvenile Justice as a Cabinet level agency or a part of an existing state agency. The General Assembly asked that the reorganization plan include recommendations for:

- Establishing a cabinet level agency
- Programs and funding within the new department
- New organizational structure
- Budget requirements of the new department
- Legislative requirements for establishing the new department.

Gov. Hunt charged the State Advisory Council on Juvenile Justice and Delinquency Prevention with developing recommendations for reorganization of the Office of Juvenile Justice into a new

cabinet agency. State Sen. Roy Cooper of Nash County and Rep. Phil Baddour of Wayne County led the effort, and made recommendations to the Governor.

The Plan

Building on the recommendations of the Council on Juvenile Justice and Delinquency Prevention, the Governor's plan would create a cabinet-level juvenile justice agency, the Department of Juvenile Justice and Delinquency Prevention. The plan elevates the Office of Juvenile Justice to a cabinet level agency, consolidates juvenile crime prevention and intervention programs, and coordinates state and local services. The creation of the new Department of Juvenile Justice and Delinquency Prevention will not require any additional funds. The budget for the new department will be outlined in the Governor's budget to be presented to the General Assembly in May 2000.

The Department of Juvenile Justice and Delinquency Prevention

The Dept. of Juvenile Justice and Delinquency Prevention will create a single, stronger and more effective approach to fighting juvenile crime and boosting prevention efforts across the state. It will devote its energy and its focus to prevention, punishment, mentoring, school safety and treatment -- all under one roof.

The department will coordinate state efforts and help community leaders in all 100 counties develop juvenile crime prevention plans to implement the juvenile laws of this state.

Programs and Funds to be Moved Into New Department

The Governor's plan moves the following programs and their budgets into the new Department of Juvenile Justice and Delinquency Prevention to ensure the most coordinated and effective approach to fighting juvenile crime and improving prevention efforts.

Guard Response to Alternative Sentencing Program (GRASP)

Currently administered by the Dept. of Crime Control and Public Safety and operated by the National Guard, the GRASP program provides regimented training program for at-risk and court-involved juvenile offenders aged 13 to 15. Because GRASP is an intervention program for juvenile offenders, it would be more effective if housed with the other intervention programs within the new Department.

$338,000 budget

Juvenile Accountability Incentive Block Grant (JAIBG)

JAIBG is a block grant from the federal Department of Justice that funds a broad range of local juvenile crime programs. Under the Governor's plan, these funds would move from the Governor's Crime Commission to the new Department of Juvenile Justice and Delinquency Prevention. The new Department would direct funding to local Juvenile Crime Prevention Councils, which would then determine how these funds could best serve local prevention efforts.

$5.46 million budget

Better Coordination with Other Related Programs.

To effectively tackle the problem of juvenile crime, the new Department of Juvenile Justice and Delinquency Prevention will need to coordinate its efforts across the state. The Governor's plan would establish partnerships with the following programs:

At-Risk Student Services Grant
The Department of Public Instruction's At-Risk Student Services Grant totals nearly $158 million and is used by Local Education Authorities (LEAs) to prevent school dropouts, school failure, and school violence. Juvenile Crime Prevention Councils (JCPCs) receive $24 million to fund juvenile crime prevention programs. The Governor's plan would:

1) Request that the State Board of Education and the State Superintendent encourage local superintendents and LEAs to work with JCPCs on an annual basis to develop coordinated delinquency prevention and school safety spending plans.
2) Require the new Department of Juvenile Justice and Delinquency Prevention to issue a policy requiring JCPCs to coordinate with Superintendents and LEAs in developing annual delinquency prevention and school safety spending plans.

MAJORS Program
The MAJORS (Managing Access for Juvenile Offender Resources and Services) program in the Department of Health and Human Services operates collaboratively with OJJ to provide substance abuse treatment services to court involved delinquent children in 12 communities. The program coordinates court counselors and judges and treatment staff to link juvenile offenders with appropriate treatment services.

To ensure strong state and local collaborative planning, DHHS and the Department of Juvenile Justice and Delinquency Prevention will develop a Memorandum of Agreement that will strengthen the MAJORS program by enhancing their procedures for joint communication, decision-making, and accountability.

Programs Requiring Further Study
Determining the most appropriate placement and utilization of the Center for Prevention of School Violence will require further study due to the Center's dual role in providing research and support to schools and school districts as well as law enforcement and juvenile justice professionals.

Center for Prevention of School Violence
Currently located at North Carolina State University, the Center's mission is to help ensure every student will attend a school that is safe and secure. The Center is the primary point of contact for information, programs, and research about preventing school violence. The Center establishes and supports School Resource Officers, Students Against Violence Everywhere (SAVE) chapters, and conflict management and peer mediation programs. Further study is required to determine the best utilization of the Center's resources.
$500,000 budget

Part II

Establishing New Department of Juvenile Justice and Delinquency Prevention

Following the recommendations of the Juvenile Funds and Plan of Reorganization Subcommittee of the State Advisory Council on Juvenile Justice and Delinquency Prevention, Chaired by Senator Roy Cooper and Representative Phil Baddour, the Governor recommends establishing a Department of Juvenile Justice and Delinquency Prevention.

Establishing the new department will create a single, stronger and more effective approach to fighting juvenile crime and boosting prevention efforts across the state. It will devote its energy and its focus to prevention, punishment, mentoring, school safety and treatment -- all under one roof.

The department will help community leaders in all 100 counties develop juvenile crime prevention plans and implement the juvenile justice laws of this state. The department will be charged with:

1) Ensuring safe schools and safe communities throughout North Carolina,
2) Establishing prevention programs that deter youths from committing crimes, and
3) Creating effective punishment and treatment programs that rehabilitate juvenile offenders.

Review of Approaches in Other States

Rising juvenile crime rates over the last decade have created an increasing focus on efforts to strengthen prevention and intervention efforts. States are bringing their juvenile justice programs together in cabinet level agencies or secretariats to develop unified strategies to help to increase public safety and provide youth with opportunities and alternatives to crime. Single agencies have the ability to develop a coordinated, statewide strategic plan for addressing the issue of juvenile delinquency and have the increased ability to develop new and innovative programs and good faith partnerships with local communities.

Although juvenile justice programs are organized in myriad ways across the nation, states that are proactive about addressing rising juvenile crime rates most often formulate separate, cabinet-level juvenile justice agencies. Thirteen (13) states/territories currently have stand-alone departments, and nine (9) of these states created the new department within the last seven (7) years. States with separate departments include Alabama, Arizona, Florida, Georgia, Idaho, Kansas, Maryland, New Hampshire, Ohio, Oklahoma, Oregon, Texas, and Puerto Rico.

In several other states, departments are "grouped" together in umbrella organizations for various purposes and are referred to as "Secretariats." In these cases, the departments are still referred to as "separate," but the degrees of autonomy differ. This is a different structure from North Carolina, but this structure is very similar to having a cabinet level department for Juvenile Justice. Five states fall into this category: Kentucky, Virginia, Delaware, California and South Carolina.

The remaining states locate juvenile justice in a variety of other agencies including Department of Correction; Social Services; Human Services; Public Safety; and Children, Youth, and Family Services. These disparate structures are less effective in establishing a unified, effective plan for punishment and prevention.

Part III

Programs and Funds to Move into New Department

To determine how best to structure the new Department of Juvenile Justice and Delinquency Prevention, the joint sub-committee on Juvenile Funds and Plan of Reorganization chaired by Representative Baddour and Senator Cooper reviewed various divisions in other department for potential transfer to the new Department of Juvenile Justice and Delinquency Prevention.

The following programs were discussed by the sub-committee:

- ***Guard Response Alternative Sentencing Program – GRASP*** (Department of Crime Control and Public Safety)
- ***Juvenile Accountability Incentive Block Grant*** (Department of Crime Control and Public Safety – Governor's Crime Commission)
- ***At Risk Student Services and Student Accountability Grants*** (Department of Public Instruction)
- ***Guardian Ad Litem*** (Administrative Office of the Courts)
- ***Youth Advocacy and Involvement Office*** (Department of Administration)
- ***Tarheel Challenge Academy*** (Department of Crime Control and Public Safety)
- ***Juvenile Justice and Delinquency Prevention Grants*** (Department of Crime Control and Public Safety – Governor's Crime Commission)
- ***MAJORS*** – Substance Abuse Programs (Department of Health and Human Services)
- ***The Center for the Prevention of School Violence*** (North Carolina State University)

Programs and Funds Recommended to Move Into New Department

To ensure the most coordinated and effective approach to fighting juvenile crime and improving prevention efforts, the following programs are recommended for transfer into the new Department:

The Guard Response Alternative Sentencing Program (GRASP)

Currently administered by the Department of Crime Control and Public Safety and operated by the National Guard, the Grasp program provides a regimented training program for at-risk and adjudicated juvenile offenders aged 13-15. The program's mission is to build self-esteem and emphasize the consequences of individual actions. The Office of Juvenile Justice is currently receiving pass through funds for this program, and is responsible for its outcome, though it is housed in the Department of Crime Control and Public Safety. Because this is an intervention program designed specifically by juvenile offenders, it should be moved into the direct control of

the new department. Moving this program will give the Office of Juvenile Justice the ability to have final authority over program structure and will create a clear accountability system. The National Guard will continue to operate this program through a contractual arrangement with the Office of Juvenile Justice.
$338,000 budget

Juvenile Accountability Incentive Block Grant (JAIBG)
Currently administered by the Governor's Crime Commission, JAIBG is a block grant from the federal Department of Justice that funds a broad range of local juvenile crime programs, including:

- building, expanding or operating detention/corrections facilities;
- developing/administering accountability-based sanctions for offenders;
- hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles;
- hiring additional prosecutors;
- providing funding to enable prosecutors to address drug, gang, youth violence;
- technology, equipment, and training to assist prosecutors;
- improving effectiveness and efficiency of juvenile courts & probation officers;
- establishing court-based juvenile justice programs to target young firearms offenders;
- establishing drug court programs;
- establishing/maintaining interagency information-sharing programs;
- establishing/maintaining accountability-based programs; and
- may be used for testing certain categories of juvenile offenders.

The transfer of the JAIBG funds to the new department will allow the Department to become the sole source of funds for Juvenile Crime Prevention grants within the state. The new Department will direct these funds to local Juvenile Crime Prevention Councils, which would then determine how these funds could best serve local prevention efforts. The new Department Juvenile Justice and Delinquency Prevention will be able to use the administrative allowance from this grant to develop a comprehensive research and monitoring program, to improve delinquency prevention programs, and enhance the operational structure by enhancing the budget and internal auditing sections.
$5.46 billion budget

Better Coordination with Other Related Programs

To effectively tackle the problem of juvenile crime, the new Department of Juvenile Justice and Delinquency Prevention will need to coordinate its efforts across the state. The Governor's plan would establish partnerships with the following programs:

At-Risk Student Services Grant
The Department of Public Instruction's At-Risk Student Services Grant totals nearly $158 million and is used by Local Education Authorities (LEAs) to prevent school dropouts, school failure, and school violence. Juvenile Crime Prevention Councils (JCPCs) receive $24 million to fund juvenile crime prevention programs. The Governor's plan would:

1) Request that the State Board of Education and the State Superintendent encourage local superintendents and LEAs to work with JCPCs on an annual basis to develop coordinated delinquency prevention and school safety spending plans.
2) Require the new Department of Juvenile Justice and Delinquency Prevention to issue a policy requiring JCPCs to coordinate with Superintendents and LEAs in developing annual delinquency prevention and school safety spending plans.

MAJORS Program
The MAJORS (Managing Access for Juvenile Offender Resources and Services) program in the Department of Health and Human Services operates collaboratively with OJJ to provide substance abuse treatment services to court involved delinquent children in 12 communities. The program coordinates court counselors and judges and treatment staff to link juvenile offenders with appropriate treatment services.

To ensure strong state and local collaborative planning, DHHS and the Department of Juvenile Justice and Delinquency Prevention will develop a Memorandum of Agreement that will strengthen the MAJORS program by enhancing their procedures for joint communication, decision-making, and accountability.

Programs Not Recommended for Transfer

There were other programs discussed by this committee, but not recommended for transfer to the new department at this time. These include:

Guardian Ad Litem (GAL)
The GAL program is housed in the Administrative Office of the Courts and was established to provide trained independent advocates to represent and promote the best interest of children involved in abuse, neglect and dependency civil court cases. Although most children in the GAL program are "at-risk" of becoming juvenile offenders, this program would not be appropriately placed within the new department for several reasons. First, GAL activities are civil not criminal actions, unlike most Office of Juvenile Justice activities. Second, the Office of Juvenile Justice Court Services has no contact or experience with GAL children. Third, it is important that the GAL program stay within the judicial branch to ensure its neutrality in their mission of child advocacy.

Youth Advocacy and Involvement Council
The Youth Advocacy and Involvement Council in the Department of Administration is not recommended to transfer to the new department. This program, under the leadership and directives of councils and advisory groups, and in cooperation with public and private agencies has two major focuses. One, focus is as an advocate protecting the interest of youth individually and comprehensively. The second focus is being a catalyst for and provider of positive peer development for youth in the state. Like the GAL program, this program provides advocacy services and would be able to better serve their children in a neutral setting. Therefore, the new Department would not be an appropriate placement for this program.

Tarheel Challenge Academy
The Tarheel Challenge Academy is funded by the federal Department of Defense and is operated by the National Guard. Crime Control and Public Safety currently administers this program. The

program offers a quasi-military style program for 16-to 18-year-old dropouts who do not have a heavy criminal involvement. This program is not recommended to transfer for the following reasons: First, the mission of this program is different than that of the Office of Juvenile Justice. This group of kids is not technically under the province of Office of Juvenile Justice because of their age. In NC, a juvenile for juvenile justice purposes is younger than age 16 at the time of court involvement. Second, federal regulations prohibit changing the target population or the curriculum of this program. At this time it is recommended that the Tarheel Challenge Academy remain in Crime Control and Public Safety.

Juvenile Justice and Delinquency Program (JJDP)
This is also a federal Department of Justice block grant distributed by the Governor's Crime Commission is issued for the following:

- Planning and administration;
- State advisory group allocation;
- Deinstitutionalization of status offenders;
- Separation of juveniles from adult offenders;
- Jail removal;
- Compliance monitoring;
- Disproportionate minority confinement;
- Native American tribes: illegal drugs and alcohol;
- Serious crime; gangs;
- Delinquency prevention;
- Systems improvement and other program areas.

Although some of these issues are related to the mission of the Office of Juvenile Justice, some are not. Therefore, it is recommended that JJDP continue to be administered by the Governor's Crime Commission.

Programs Requiring Further Study

Determining the most appropriate placement and utilization of the Center for Prevention of School Violence will require further study due to the Center's role in providing research and support to schools and school districts as well as law enforcement and juvenile justice professionals.

Center for Prevention of School Violence
Currently located at North Carolina State University, the Center's mission is to help ensure every student will attend a school that is safe and secure. The Center is the primary point of contact for information, programs, and research about preventing school violence. The Center establishes and supports School Resource Officers, Students Against Violence Everywhere (SAVE) chapters, and conflict management and peer mediation programs. Further study is required to determine the best utilization of the Center's resources.
$500,000 budget

Part IV

Organizational Structure of the New Department

Current Organizational Structure of Office of Juvenile Justice

Effective February 1, 1999, George Sweat was appointed Director of the Office of Juvenile Justice by Governor Jim Hunt. Director Sweat formally announced his management team on April 15, 1999. The following is a brief description of management team staff and their responsibilities.

The following positions report to the Director: one Executive Assistant II, one Deputy, four Bureau Directors, a Public Information Officer and an Assistant to the Director. The Assistant to the Director is responsible for Legislative Affairs, Intergovernmental Relations, and Public Information.

The Deputy Director is responsible for J-Net, and the Information Management System, Program Evaluation and Monitoring, Training and Development, Accreditation/Policy/Procedure, Planning/Research/Federal Grants, Professional Standards. Responsibilities of the Bureau Director of Intervention/Prevention include supervision of Court Counselors on a statewide basis and administering grants to counties through Juvenile Crime Prevention Counsels (formally known as the CBA program). The Special Initiatives Bureau Director is responsible for the Support our Students initiative (SOS), the Governor's One on One Program, the Guard Response Alternative Sentencing Program (GRASP), Eckerd Camps, Camp Woodson, Multi-Purpose Group Homes, and Mentoring Programs. The Administrative Services Bureau director oversees Budget, Accounting, Human Resources, Purchasing, and Facility Management.

The Detention Bureau is responsible for the five training schools and ten detention centers across the state. The Director serves as liaison with the four county-operated detention facilities and oversees the transportation unit that coordinates all transportation needs of detention and training schools. The five training school directors also report directly to this Bureau Director.

Organizational Structure for New Department of Juvenile Justice and Delinquency Prevention

It is recommended that the new Office of Juvenile Justice and Delinquency Prevention remain structured as it currently exists, adding the Guard Response to Alternative Sentencing Program and the Juvenile Accountability Incentive Block Grant funding from the Governor's Crime Commission and staff. An organizational chart is attached to show the recommended reporting relationships for these new programs within the Department of Juvenile Justice and Delinquency Prevention.

As promised in the last legislative session, there will be no increase in costs to establish a new Department of Juvenile Justice and Delinquency Prevention.

Part V

The Proposed Budget for Fiscal Year 2001

No additional funds will be required to establish the Department of Juvenile Justice and Delinquency Prevention. The Governor will release a comprehensive budget document that will address the budget needs of this department and all other departments in May.

Part VI

Legislative Proposals

Legislative proposals will need to be drafted to make the Office of Juvenile Justice a Department and to transfer the GRASP and JAIBG funding to the new Department. There will not be any legislative proposals to consolidate or expand office space at this time because we have a two year lease that will not expire until March 2002. The proposed new Department of Juvenile Justice and Delinquency Prevention will be located at 410 S. Salisbury St., Raleigh, NCPart

Part VII

Analysis of Alternative Organizational Structures

The legislature requested an analysis of whether the authority, powers, duties, and functions of the Office of Juvenile Justice should be moved into an existing department or to a new cabinet-level agency. To fulfill that request, the Juvenile Funds and Plan of Reorganization Subcommittee reviewed options for moving the department into four existing agencies: the Administrative Office of the Courts, the Department of Correction, the Department of Crime Control and Public Safety, and the Department of Health and Human Services.

The Subcommittee concluded that the Office of Juvenile Justice's mission does not fit squarely within any of the existing agencies and merging the office would dilute the state's ability to create a strong focus on juvenile justice issues. Merging of OJJ into an existing department would not necessarily create any additional efficiency due to its size. Based on the size of its staff, the Office of Juvenile Justice is currently the seventh largest of North Carolina's twenty-six agencies, and based on its budget, the state's eleventh largest agency (see attached charts). As a result, placing OJJ within an existing agency would be similar to merging two departments and would not necessarily achieve any economies of scale. The office would continue to require the same level of administrative support that it currently requires.

1. Administrative Office of the Courts (AOC)

The Subcommittee of the Council concluded that the work of the Office of Juvenile Justice is an Executive function of government, not a Judicial function, and should therefore, remain in the Executive branch. As part of the Judicial branch, the Administrative Office of the Courts is charged with providing quality justice throughout the North Carolina court system, while OJJ is responsible for coordinating prevention and rehabilitation issues associated with juvenile offenders. In other states, where probation works for the courts, probation is a Judicial function. However in North Carolina, once a judgment is imposed on a juvenile offender, the Executive branch of government has authority to carry out the sanction imposed. North Carolina has clearly decided already that probation is an Executive branch function, both in the adult and juvenile systems.

Furthermore, prevention efforts are also clearly Executive branch functions; juvenile crime prevention strategies occur prior to court involvement and can best be carried out through schools and community-based intervention programs.

The AOC is currently North Carolina's sixth largest agency based on the size of its staff and the fourth largest based on its budget. If transferred to the Administrative Office of the Courts, the Office of Juvenile Justice would increase AOC's personnel and budget by approximately 40%.

2. Department of Correction (DOC)

The subcommittee determined that placement of OJJ in DOC would negate the critical difference between North Carolina's punishment mission in dealing with adults and the rehabilitation and prevention responsibility in dealing with juvenile offenders. OJJ is a treatment-centered environment with greater emphasis on prevention and rehabilitation for juveniles age 10 to age 21 in training schools. DOC, in contrast, serves adults in a more punitive, controlling environment with a secondary emphasis on treatment.

The Subcommittee also concluded that placing juveniles in the Department of Correction might also increase the stigma of their offense and work against the OJJ mission of rehabilitating all kids in the juvenile justice system. Unlike adult offenders, juveniles always reenter the community when they turn 21; therefore, treatment and rehabilitation philosophy are essential.

Furthermore, DOC is North Carolina's second largest agency by staff and fourth largest by budget. The Subcommittee felt that the size of DOC would overshadow the importance of OJJ because other divisions in the DOC are so much larger than OJJ. Serving youth offenders and preventing juvenile delinquency would be just one small piece of a very large agency; North Carolina's ability to clearly focus on juvenile delinquency prevention would be lost.

3. Department of Crime Control and Public Safety (CCPS)

Though Crime Control and Public Safety has components of its agency which relate to OJJ (Community Service and Victim and Justice Services), their missions are very different. CCPS

focuses largely on safety on NC highways and on coordinating disaster relief efforts, while OJJ is responsible for implementing programs that focus on preventing and reducing juvenile crime.

Because of OJJ's staff and budget size, it would be difficult for CCPS to incorporate juvenile justice into its agency. Crime Control and Public Safety is primarily a law enforcement agency with the Highway Patrol making up approximately 75% of the employees and the budget in the department. When the remaining CCPS staff is separated from the Highway Patrol, CCPS has 725 staff as compared to OJJs 2046 employees. The budget for CCPS, eliminating the Highway Patrol, is approximately $205 million as compared to OJJs budget of approximately $141 million.

4. Department of Health and Human Services (DHHS)

In January 1999, the legislature recognized the need to move the Division of Youth Services, the largest organizational component of the Office of Juvenile Justice, out of DHHS and into the new Office of Juvenile Justice. Moving OJJ back into DHHS would eliminate the state's ability to provide a single focus on the importance of reducing juvenile delinquency.

OJJ has some similarities with DHHS such as the treatment and prevention emphasis and the family treatment orientation, but OJJ is focused specifically on efforts to deter youth crime through punishment and prevention. To place OJJ back in DHHS would allow juvenile justice issues to be overshadowed by the larger health and human service focus of DHHS. DHHS is charged with serving the state's broad range of health and human services needs, including: providing access to health care; mental health and substance abuse services; rehabilitation services for the disabled, blind, hard of hearing; Smart Start and child care programs; Work First services and other welfare related programs; child support enforcement programs; and child abuse and neglect services.

Furthermore, OJJ would become a small division within a huge organization that would not be able to provide it with the focused leadership that the issue needs. DHHS is already the state's largest agency by budget and by staff size. DHHS has a staff of 18,565 people and a $7.8 billion budget, compared to OJJ's staff of 2,046 and budget of $141 million. Juvenile Justice would definitely lose visibility and focus if placed within such a large agency.

Schedule 1 - Departments by Number of Position	1999-00 Budgeted Certified Positions	Authorized Funds
Agency		
Department of Health & Human Services	18,565	$ 7,814,678,146
Department of Correction	18,332	899,233,568
Highway Fund *	16,586	2,822,048,210
Administrative Office of the Courts	5,108	344,443,876
Department of Environment and Natural Resources	3,877	281,899,785
Department of Commerce	3,038	316,948,754
**Office of Juvenile Justice ** **	**2,046**	**141,399,510**
Department of Agriculture & Consumer Services	1,278	84,210,610
Department of Revenue	1,265	82,287,676
Department of Justice	1,242	80,144,513
Department of Administration	792	73,811,595
Department of Cultural Resources	748	78,386,255
Department of Crime Control and Public Safety*	725	205,214,320
Department of Public Instruction	494	5,277,518,248
Department of Labor	437	24,765,256
Department of Insurance	397	55,019,658
Department of State Treasurer (Includes Special Contributions)	287	19,883,254
General Assembly	218	35,383,575
Department of State Auditor	193	11,614,631
Department of Community Colleges	185	591,015,693
Department of Secretary of State	146	7,005,181
Office of State Controller	96	11,513,513
Office State Budget and Management and State Planning	96	8,332,319
Office of the Governor	69	5,435,102
Office of Lieutenant Governor	9	640,485
Miscellaneous***	208	307,519,297
	76,433	$19,580,353,030

*Highway Fund Positions and Budgeted Dollars reflect positions and funding for the N.C. Highway Patrol.
**Updated positions added in Short Session
*** Includes Debt Service, OAH, Board of Elections, and other miscellaneous categories.

Schedule 2 - Departments by Budget Size	1999-00 Budgeted Certified Positions	Authorized Funds
Agency		
Department of Health & Human Services	18,565	$ 7,814,678,146
Department of Public Instruction	494	5,277,518,248
Highway Fund *	16,586	2,822,048,210
Department of Correction	18,332	899,233,568
Department of Community Colleges	185	591,015,693
Administrative Office of the Courts	5,108	344,443,876
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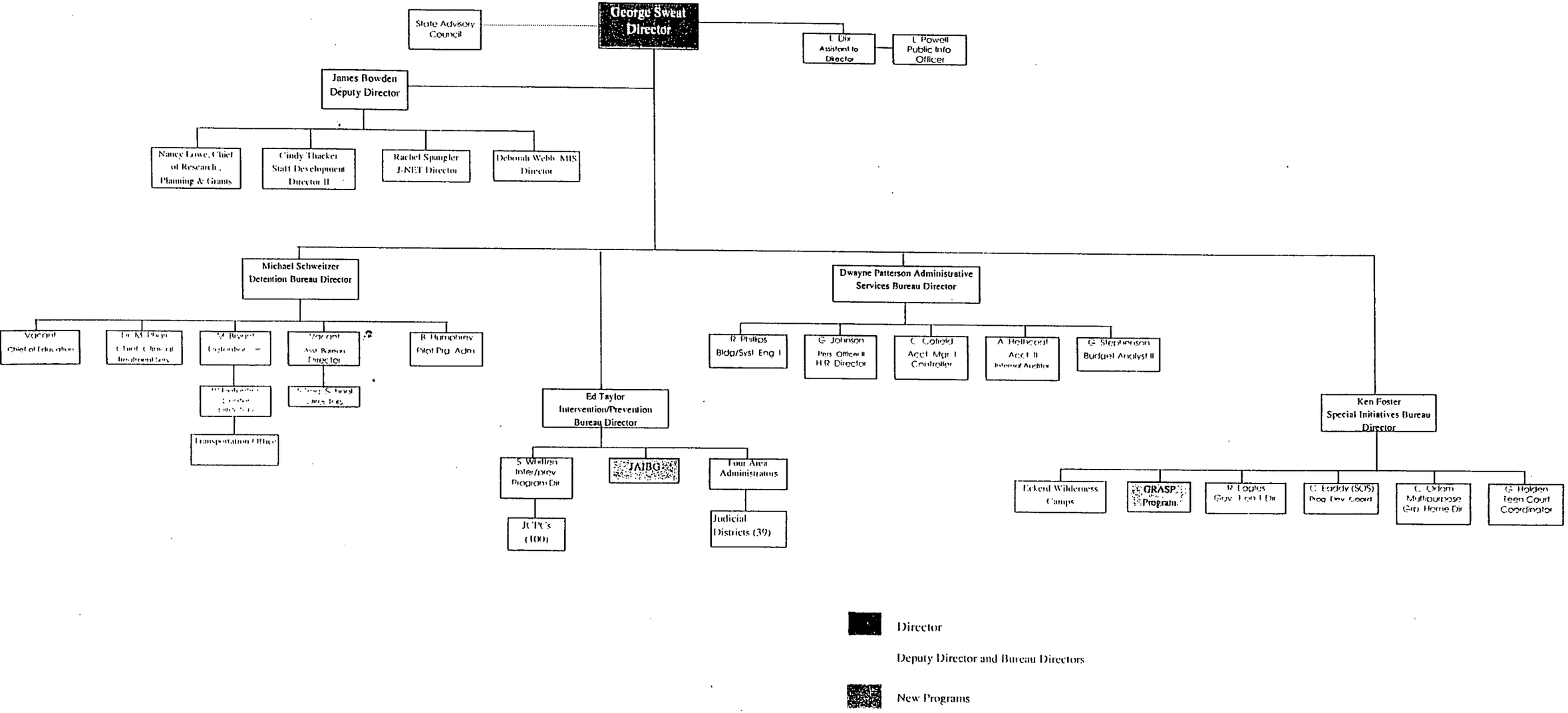
*Highway Fund Positions and Budgeted Dollars reflect positions and funding for the N.C. Highway Patrol.

**Updated positions added in Short Session

*** Includes Debt Service, OAH, Board of Elections, and other miscellaneous categories.

NORTH CAROLINA OFFICE OF JUVENILE JUSTICE



"(12) To assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public, or the juvenile, and necessary to carry out the responsibilities of court counselors under this section and under ~~Subchapter XI of Chapter 7A~~ Chapter 7B of the General Statutes."

(f) Effective July 1, 1999, the Revisor of Statutes shall substitute the term "post-release supervision" for the term "aftercare" and the term "detention facility" for the terms "detention home" and "regional detention home" everywhere those terms appear in Article 3C of Chapter 147 of the General Statutes, as enacted in Section 1 of this act.

PART II. PLAN OF REORGANIZATION

Section 3. The Governor shall develop a proposed plan of reorganization to transfer all authority, powers, duties, and functions of the Division of Youth Services of the Department of Health and Human Services and of the Juvenile Services Division of the Administrative Office of the Courts, which are temporarily transferred to the Office of the Governor in Section 1 of this act, to an existing principal State department, or in the alternative, to a new principal State department. While the Division of Youth Services and the Juvenile Services Division ("Divisions") are consolidated under the Office of the Governor, the Governor shall consider the organizational structure, the operating budgets, and the duties and requirements of the Divisions to determine how those Divisions can operate most effectively and efficiently.

As part of the development of the plan of reorganization, the Governor shall conduct a study to determine alternative organizational structures for managing State juvenile programs and shall consider the feasibility and advisability of transferring the authority, powers, duties, and functions of the Divisions to an existing principal State department or in the alternative, to a new principal State department. The Governor shall review all agency divisions, councils, and programs that provide services to and treatment of juveniles, including other divisions of the Department of Health and Human Services, the Center for the Prevention of School Violence, School Resource Officers, and the Guardian ad Litem Program of the Administrative Office of the Courts to determine whether the agency divisions, councils, or programs would operate more effectively and efficiently if consolidated under the plan of reorganization. The Governor shall also study the method by which federal and State funds and grants, including the Juvenile Accountability Incentive Block Grants, are distributed to the local level to determine whether those functions should be consolidated under the plan of reorganization, whether priority should be given to funding certain programs in an effort to develop those programs statewide, and whether matching funds should be required from local governments as a prerequisite to obtaining State funds.

The plan of reorganization shall include the following:

(1) The organizational structure of the new department if the creation of a new department is recommended, or, if consolidation of the Divisions within an existing department is recommended, the organizational structure of the division or divisions and a summary of any central administrative office support given to the division or

divisions. The plan shall include a statement of the total personnel positions for management, administration, and programs and the reporting relationships of those positions.

(2) The proposed budget for fiscal year 2000-2001 for the new department, or the existing department and consolidated division or divisions within that department, including any proposed new positions, position reclassifications, or changes to salary structure of personnel.

(3) Any proposal to consolidate any existing agency division, council, or program, other than the Division of Youth Services or the Juvenile Services Division, that provides services to and treatment of juveniles within the new department or new division or divisions.

(4) A written statement of all options of reorganization considered by the Governor, a summary of why those options were not adopted, and an explanation of how the recommended organization and management structure will result in the most effective and efficient delivery of juvenile services and programs.

(5) Any legislative proposals required to provide services to and treatment of juveniles more efficiently and effectively and any proposals to consolidate or expand office space, including the location and expected cost of the proposal.

All departments, divisions, councils, and programs from which the Governor may require information or assistance in developing the plan of reorganization shall cooperate with the Governor.

On or before April 1, 2000, the Governor shall report the plan of reorganization and funding requirements that are required to implement the plan of reorganization to the General Assembly. The plan of reorganization developed pursuant to this section shall not become effective until it is approved by the General Assembly.

Section 4. (a) G.S. 7A-343.1 reads as rewritten:

"*§ 7A-343.1. Distribution of copies of the appellate division reports.*

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1

VISITOR REGISTRATION SHEET

Judiciary IV — Name of Committee

6/1/00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R Powell	AOC
Whitney Oberg	OSBM
Jim Koerner	NCACC
John [illegible]	NCFPC
Bob Scott	NCACC
Jonathan Williams	CCPS
George Sweat	O.J.J.
Andrew Clair	John Locke Found.
S. Parker	GAL
Pam Deardorff	YA10/DOA
Julian [illegible]	NC Centennary Cmsn.
Greg Dick	OJJ.
Jonathan Williams	NCPBA
Deborah Ross	ACLU
Sara Simrill	Governor's Office
Janet C. Erwin	Governor's Office
Martha Rodriguez	YAID
Tania L. [illegible]	Governor's Office
Sara L. Allen	"
Amanda K. Adams	"
Shannon Vickery	UNC-TV
Greg Retsinas	NY Times Comp
[illegible]	AP
[illegible]	WRAL
[illegible]	Heads Cmsn.
MICHAEL BRUNSON	OJJ

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 6, 2000
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 1609 Clarify Juvenile Procedures
Sponsor: Rep. Earle

HB 1634 Guardianship Revisions
Sponsor: Rep. Earle

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 6, 2000 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, June 6, 2000, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Decker, Earle, Jeffus, Justus, McMahan, Pope, Saunders, and Weiss. Robin Johnson and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 1609 Clarify Juvenile Procedures. Rep. Haire moved to adopt the proposed committee substitute for purposes of discussion, and without objection the committee substitute was before the committee. Rep. Earle, bill sponsor, called on Robin Johnson, Staff Attorney, to give a section by section overview of the bill. Members of the committee raised several questions with regard to the role of the Guardian Ad Litem, and Chris Sinha from the Attorney General's office and Debra Sasser from the Administrative Office of the Courts were on hand to answer those questions and to lend their support to the bill. Tom Vitaglione of the Child Fatality Task Force told the members of the committee that he was not aware of any opposition to the bill, and Chuck Harris of the Department of Health and Human Services shared the department's strong endorsement of the bill. Rep. Jeffus moved for a favorable report as to committee substitute bill unfavorable as to original bill. Motion passed unanimously.

HB 1634 Guardianship Revisions. Rep. Haire moved to adopt the proposed committee substitute for purposes of discussion, and without objection the committee substitute was before the committee. Rep. Earle, bill sponsor was recognized to explain the bill. She noted that this was another bill that came out of the Child Fatality Task Force, and then called on Staff Attorney Esther Manheimer to give a section by section overview of the bill. Following a brief discussion by members of the committee, Rep. Earle proposed a technical amendment. Rep. Haire moved to adopt the amendment, and that motion passed. Rep. Haire moved that the amendment be rolled into a new committee substitute bill, and that bill be given a favorable report unfavorable as to original bill. Motion passed.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

2000 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1609 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND DEPENDENT JUVENILES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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)

5/25/00

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1609
H1609-PCSLY-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Juvenile Procedures. (Public)

Sponsors:

Referred to: Judiciary IV

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND DEPENDENT JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-406(b) reads as rewritten:

"(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment

and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent."

Section 2. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion 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.~~ petition or motion. 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-1111(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-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 3. G.S. 7B-1102 reads as rewritten:

"**§ 7B-1102. Pending child abuse, neglect, or dependency ~~hearings.~~ proceedings.**

~~When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5.~~

(a) When the district court is exercising jurisdiction over a juvenile and the juvenile's parent in an abuse, neglect, or dependency proceeding, a person or agency specified in G.S. 7B-1103(a) may file in that proceeding a motion for termination of the parent's rights in relation to the juvenile.

(b) A motion pursuant to subsection (a) of this section and the notice required by G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

(1) Service must be in accordance with G.S. 1A-1, Rule 4, if the person or agency to be served was not served originally with summons, or by published notice if service was by publication, that included notice substantially in conformity with the notice required by G.S. 7B-406(b)(4)e.

(2) In any case, the court may order that service of the motion and notice be made pursuant to G.S. 1A-1, Rule 4.

The parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(c) When a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, the court on its own motion or motion of a party may consolidate the action pursuant to G.S. 1A-1, Rule 42."

Section 4. G.S. 7B-1103 reads as rewritten:

"**§ 7B-1103. Who may ~~petition.~~ file a petition or motion.**

(a) A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed ~~by:~~ by one or more of the following:

(1) Either parent seeking termination of the right of the other ~~parent; or~~ parent.
(2) Any person who has been judicially appointed as the guardian of the person of the ~~juvenile; or~~ juvenile.
(3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent ~~jurisdiction; or~~ jurisdiction.
(4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701; or~~ 48-3-701.
(5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the ~~petition; or~~ petition or motion.
(6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility and who has served in this capacity for at least one continuous year; or~~ responsibility.
(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

(b) Any person or agency that may file a petition under subsection (a) of this section may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a motion to terminate parental rights."

Section 5. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. ~~Petition.~~ Petition or motion.**

The ~~petition~~ petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled 'In Re (last name of ~~juvenile)",~~ juvenile), a minor ~~juvenile;~~ juvenile'; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one ~~entitled to petition under G.S. 7B-1103.~~ authorized by G.S. 7B-1103 to file a petition or motion.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the ~~petitioner,~~ petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference.

(4) The name and address of any person who has been judicially appointed as guardian of the person of the ~~juvenile pursuant to the provisions of Chapter 35A of the General Statutes, or of G.S. 7B-600.~~ juvenile.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the ~~petition.~~ petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

Section 6. Article 11 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare a notice directed to each of the following persons or agency, not otherwise a movant:

(1) The parents of the juvenile.

(2) Any person who has been judicially appointed as guardian of the person of the juvenile.

(3) The custodian of the juvenile appointed by a court of competent jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the juvenile has been given by a court of competent jurisdiction.

(5) The juvenile's guardian ad litem if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.

(6) The juvenile, if the juvenile is 12 years of age or older at the time the motion is filed.

Provided, no notice need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the movant. The notice shall notify the person or agency to whom it is directed to file a written response within 30 days after service of the motion and notice. Service of the motion and notice shall be completed as provided under G.S. 7B-1102(b).

(b) The notice required by subsection (a) of this section shall include all of the following:

(1) The name of the minor juvenile.

(2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.

(3) Notice that any attorney appointed previously to represent the parent in the abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.

(4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.

(5) Notice that the date, time, and place of hearing will be mailed by the clerk upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a movant, is served with a motion seeking termination of a parent's rights, the director shall file a written response and shall be deemed a party to the proceeding."

Section 7. G.S. 7B-1107 reads as rewritten:

"§ 7B-1107. Failure of ~~respondents to answer.~~ parent to answer or respond.

Upon the failure of ~~the respondents~~ a respondent parent to file written answer to the petition or written response to the motion ~~with the court~~ within 30 days after service of the summons and ~~petition,~~ petition or notice and motion, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court shall issue an order terminating all parental and custodial rights of ~~the respondent or respondents~~ that parent with respect to the juvenile; provided the court shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the ~~petition.~~ petition or motion."

Section 8. G.S. 7B-1108 reads as rewritten:

"§ 7B-1108. ~~Answer of respondents.~~ Answer or response of parent.

(a) Any respondent may file a written answer to the ~~petition.~~ petition or written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the ~~petition,~~ petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. ~~7B-1103.~~ 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days to the ~~petitioner,~~ petitioner or movant, the ~~answering respondent,~~ respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and ~~answer.~~ answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the ~~petitioner,~~ petitioner or

movant, respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

Section 9. G.S. 7B-1109 (b) and (f) read as rewritten:

"(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall appoint counsel to represent them. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination ~~petition.~~ petition or motion. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198.

...

(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. No ~~husband-wife or physician-patient privilege~~ privilege, except the attorney-client privilege, shall be grounds for excluding any evidence regarding

the existence or nonexistence of any circumstance authorizing the termination of parental ~~rights.~~ rights, both as the privilege relates to the competency of the witness and as it relates to the exclusion of confidential communications."

Section 10. G.S. 7B-1110 reads as rewritten:

"**§ 7B-1110. Disposition.**

(a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the ~~petition,~~ petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the ~~petition,~~ petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner or movant shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party.

(f) The court is not bound by the usual rules of evidence at disposition."

Section 11. G.S. 7B-1111 reads as rewritten:

"**§ 7B-1111. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction

of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the ~~petition,~~ petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition or motion.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence."

Section 12. G.S. 7B-1112 reads as rewritten:

"**§ 7B-1112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter

entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the ~~petition,~~ petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the ~~petitioner,~~ petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile."

Section 13. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1609*

Short Title: Clarify Juvenile Procedures. (Public)

Sponsors: Representatives Earle, Clary, Easterling (Primary Sponsors); Alexander, Baker, Bonner, Cansler, Cunningham, Ford, Gillespie, Gulley, Horn, Insko, McLawhorn, Melton, Morris, Rayfield, Russell, Setzer, Sutton, Thomas, Tucker, West, C. Wilson, Wright, and Yongue.

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND DEPENDENT JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-406(b) reads as rewritten:

"(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent."

Section 2. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion 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.~~ petition or motion. 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-1111(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-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 3. G.S. 7B-1102 reads as rewritten:

"**§ 7B-1102. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, ~~a petition~~ any proceeding for termination of parental rights to that juvenile ~~may~~ shall be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7B-407 shall be served with the ~~petition~~ motion to terminate parental rights in accordances with G.S. 1A-1, Rule 5."

Section 4. G.S. 7B-1103 reads as rewritten:

"**§ 7B-1103. Who may petition.**

(a) A petition to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed ~~by:~~ by one or more of the following:

(1) Either parent seeking termination of the right of the other ~~parent; or~~ parent.

(2) Any person who has been judicially appointed as the guardian of the person of the ~~juvenile; or~~ juvenile.

(3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent ~~jurisdiction; or~~ jurisdiction.

(4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701; or~~ 48-3-701.

(5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the ~~petition; or~~ petition.

(6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility and who has served in this capacity for at least one continuous year; or~~ responsibility.

(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

(b) Any person or agency that may file a petition under subsection (a) of this section may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a motion to terminate parental rights."

Section 5. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. Petition.**

The ~~petition~~ petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner and shall be entitled "In Re (last name of ~~juvenile)",~~ juvenile), a minor ~~juvenile;~~ juvenile"; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one entitled to petition under G.S. ~~7B-1103.~~ 7B-1103 or to file a motion under G.S. 7B-1102.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the ~~petitioner,~~

petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference.

(4) The name and address of any person appointed as guardian of the person of the juvenile pursuant to the provisions of Chapter 35A of the General Statutes, or of G.S. 7B-600.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the ~~petition.~~ petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

Section 6. G.S. 7B-1105 reads as rewritten:

"**§ 7B-1105. Preliminary hearing; unknown parent.**

(a) If either the name or identity of any parent whose parental rights the petitioner or movant seeks to terminate is not known to the ~~petitioner,~~ petitioner or movant, the court shall, within 10 days from the date of filing of the ~~petition,~~ petition or motion, or during the next term of court in the county where the petition or motion is filed if there is no court in the county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1106.

(c) Notice of the preliminary hearing need be given only to the petitioner or movant who shall appear at the hearing, but the court may cause summons to be issued to any person directing the person to appear and testify.

(d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

(1) Designate the court in which the petition or motion is pending;

(2) Be directed to "the father (mother) (father and mother) of a male (female) juvenile born on or about..... in (date)

.....County,.....,
(city)
....., respondent;"
(State)

(3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words "In Re Doe" substituted therefor);

(4) State that a petition or motion seeking to terminate the parental rights of the respondent has been filed;

(5) Direct the respondent to answer the petition or motion within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and

(6) State that the respondent's parental rights to the juvenile will be terminated upon failure to answer the petition or motion within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

(e) The court shall issue the order required by subsections (b) and (d) of this section within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(f) Upon the failure of the parent served by publication pursuant to subsection (d) of this section to answer the petition or respond to the motion within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent."

Section 7. G.S. 7B-1106(a) reads as rewritten:

"(a) Except as provided in G.S. 7B-1105, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to each of the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the ~~juvenile;~~ juvenile.

(2) Any person who has been judicially appointed as guardian ad litem pursuant to G.S. 7B-601 or guardian of the person of the ~~juvenile;~~ juvenile.

(3) The custodian of the juvenile appointed by a court of competent ~~jurisdiction;~~ jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent ~~jurisdiction; and~~ jurisdiction.

(5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing ~~agency~~ agency, nor to any parent who has consented to the adoption of the juvenile by the ~~petitioner.~~ petitioner, nor to any parent who has been served pursuant to G.S. 7B-407 when a motion is filed in a pending child abuse, neglect, or dependency proceeding pursuant to G.S. 7B-1102. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor."

Section 8. Article 11 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-1106.1. Issuance of notice in pending child abuse, neglect, or dependency cases.**

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall issue a notice to each of the following persons or agency, not otherwise a party petitioner:

(1) The parents of the juvenile.

(2) Any person who has been judicially appointed as guardian ad litem pursuant to G.S. 7B-601 or guardian of the person of the juvenile.

(3) The custodian of the juvenile appointed by a court of competent jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction.

(5) The juvenile, if the juvenile is 12 years of age or older at the time the motion is filed.

Provided, no notice need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the movant. The notice shall notify the respondents to file a written response within 30 days after service of the notice and motion. Service of the notice shall be completed as provided under the procedures established by G.S. 1A-1, Rule 5, but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The notice shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include all of the following:

(1) The name of the minor juvenile.

(2) Notice that a written response to the motion must be filed with the juvenile clerk within 30 days after service of the notice and motion, or the parent's rights may be terminated.

(3) Notice that if they are indigent, the parents are entitled to appointed counsel; the parents may contact the clerk immediately to request counsel.

(4) Notice that any attorney appointed previously will represent the parents in this proceeding unless otherwise ordered by the court.

(5) Notice that the date, time, and place of hearing will be mailed by the clerk upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a motion alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1111, the department shall file a written response and shall be deemed a party to the proceeding."

Section 9. G.S. 7B-1107 reads as rewritten:

"**§ 7B-1107. Failure of respondents to answer.**

Upon the failure of the respondents to file written answer to the petition or a written response to the motion with the court within 30 days after service of the summons and ~~petition,~~ petition or notice and motion, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court shall issue an order terminating all parental and custodial rights of the respondent or respondents with respect to the juvenile; provided the court shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the ~~petition.~~ petition or motion."

Section 10. G.S. 7B-1108 reads as rewritten:

"**§ 7B-1108. Answer of respondents.**

(a) Any respondent may file a written answer to the ~~petition.~~ petition or a written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the ~~petition,~~ petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. ~~7B-1103.~~ 7B-1102 or G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days to the ~~petitioner,~~ petitioner or movant, the answering respondent, and the guardian ad litem for the juvenile to determine the issues raised by the petition and ~~answer.~~ answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the

~~petitioner,~~ petitioner or movant, respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. ~~7B-1101;~~ 7B-1101, or in cases where the judicial proceeding to terminate parental rights is a motion in a pending child abuse, neglect, or dependency proceeding and a guardian ad litem has been appointed pursuant to G.S. 7B-601; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

Section 11. G.S. 7B-1109(f) reads as rewritten:

"(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. No ~~husband-wife or physician-patient privilege~~ privilege, except the attorney-client privilege, shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental ~~rights.~~ rights, both as the privilege relates to the competency of the witness and to the exclusion of confidential communications."

Section 12. G.S. 7B-1110 reads as rewritten:

"§ 7B-1110. Disposition.

(a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the ~~petition,~~ petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the ~~petition,~~ petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party.

(f) The court is not bound by the usual rules evidence at disposition."

Section 13. G.S. 7B-1111(b) reads as rewritten:

"(b) The burden in such proceedings shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence."

Section 14. G.S. 7B-1112 reads as rewritten:

"**§ 7B-1112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the ~~petition,~~ petition or motion, including a petition filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the ~~petitioner,~~ petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile."

Section 15. This act becomes effective October 1, 2000.

HOUSE BILL 1609:
Clarify Juvenile Procedures.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Earle, Clary & Easterling
Date:	June 6, 2000	**Summary by:**	Robin Johnson
Version:	H1609-PCSLY-001		Committee Counsel

SUMMARY: ***The PCS for HB 1609 generally makes technical and conforming changes to the original bill, which the Child Fatality Task Force recommended. The PCS would amend the Juvenile Code to clarify that termination of parental rights may occur by either a petition or by motion in a proceeding that alleges a juvenile is abused, neglected or dependent. The PCS would take effect October 1, 2000.***

CURRENT LAW: Currently, the Juvenile Code authorizes the filing of a petition to initiate a proceeding to terminate parental rights of a juvenile. In addition, G.S. 7B-1102 allows a petition for termination of parental rights to be filed as a motion in a pending abuse, neglect or dependency proceeding.

SECTION-BY-SECTION BILL ANALYSIS:

Section 1. G.S. 7B-406(b) is amended to specify what must be included in a summons, which is issued to the parent, guardian, custodian, or caretaker upon the filing of a petition alleging abuse, neglect, or dependency. The proposed change would add to the summons a notice that the dispositional order or a subsequent order may terminate the parental rights of the respondent parent.

Section 2. G.S. 7B-1011 is amended to include the hearing of motions as part of the court's exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights.

Section 3. G.S. 7B-1102 is rewritten to provide that a motion for termination of parental rights may be filed in pending abuse, neglect, or dependency proceedings (changes from "hearings"). The proper procedure is also given for filing this motion. It further states that when a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, a motion may be filed to consolidate the action.

Section 4. G.S. 7B-1103 is amended to stipulate who may file a motion to terminate parental rights. It further states that the parties who petition or motion may intervene in pending abuse, neglect or dependency proceedings for the purpose of filing a motion to terminate parental rights. G.S. 7B-1103 also removes the requirement that the guardian ad litem must have served in that capacity for at least one continuous year in order to be able to file a petition or motion to terminate parental rights.

Section 5: G.S. 7B-1104 states what must be included in a motion to terminate parental rights.

Section 6: G.S. 7B-1106.1 is a new section that identifies to whom a notice must be sent upon the filing of a motion to terminate parental rights in a pending child abuse, neglect or dependency case. In addition to the persons that must be sent a summons when the petition seeks termination of parental rights, this new section requires the notice be sent to the juvenile's guardian ad litem if one has been appointed. The new section also specifies the information that must be included in this notice. It further states that if the county director of social services is served a motion seeking termination of a parent's

rights, the director must file a written response to the motion and be a party to the proceeding if the director is not already involved.

Section 7: G.S. 7B-1107 is amended to identify the respondent as the parent and sets forth the time period that the parent must respond. Failure to respond in the time period provides the court with the right to proceed with a hearing to terminate parental rights.

Section 8: G.S. 7B-1108 is amended to conform the requirements of a response to a motion to terminate parental rights to the requirements applicable to the answer to a petition to terminate these rights. These requirements provide that, if the parent denies the allegations in the petition or motion, a guardian ad litem for the juvenile must be appointed unless the child is already represented, and an attorney must be appointed to represent the guardian ad litem if the guardian ad litem is not an attorney. Payments for their services will be the responsibility of the Administrative Office of the Court. The appointment of a guardian ad litem is not necessary if the parent does not deny the allegations, but the judge may appoint one to determine the best interest of the child.

Section 9: G.S.7B-1109, governing the adjudicatory hearing on termination, is amended to provide the same protections to parents in connection with a hearing on a motion that they have in connection with a hearing on a petition. If the parents are indigent, desire counsel, and are unable to afford counsel, the court shall appoint counsel and grant the necessary time for the counsel to prepare their defense to the termination petition or motion. If the parents refuse counsel and are present at the hearing, the judge shall determine their ability to proceed without counsel. Likewise, the burden of proof is on the petitioner or the movant. The findings of fact must be based on clear, cogent, and convincing evidence.

G.S. 7B-1109 also is amended to provide that the only privilege that is grounds for exclusion of evidence regarding the circumstances or nonexistence of any circumstances authorizing the termination of parental rights, both as the privilege relates to the competency of the witness and as it relates to the exclusion of confidential communications, is that of the attorney-client.

Section 10: G.S. 7B-1110 is amended to allow the court to deny a motion to terminate parental rights based on what is in the best interest of a child. Counsel for the petitioner or movant is responsible for serving a copy of the order to the guardian ad litem and the child if the child is at least 12 years old. The changes also add a new subsection (f) providing that the court is not bound by the usual rules of evidence at disposition.

Section 11: G.S. 7B 1111, which provides the grounds for terminating parental rights, is amended to add the word "motion", or "movant".

Section 12: G.S. 7B-1112, governing the effects of a termination order, is also amended to add the word "motion" or "movant".

Section 13 provides that the act takes effect October 1, 2000.

This summary substantially contributed to by DSS.

2000 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1634 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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)

5/25/00

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 1634 DATE May 6, 2000

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

COMMITTEE SUBSTITUTE ✓

(Rep.) Earle

Sen.)

moves to amend the bill on page 2, line 15

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"7B-906 or 7B-1000, the court may, prior to"

and on page 2, lines 24-27

by rewriting ~~those~~ lines to read:

"and study of the guardian."

SIGNED Beverly Earle

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1634*
Proposed Committee Substitute: H1634-PCSSK-001
This is a draft.

Short Title: Guardianship Revisions. (Public)

Sponsors:

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"§ 7B-600. Appointment of guardian.

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to

Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition pursuant to G.S. 7B-906(b)(4), 7B-906(b)(5), or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian's fitness or ability to continue assuming a guardian's duties and consider their recommendations for the disposition of the motion or petition.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;
(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;
(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1634*

Short Title: Guardianship Revisions. (Public)

Sponsors: Representatives Earle, Clary, Easterling (Primary Sponsors); Bridgeman, Ford, Gibson, Insko, Melton, and Morris.

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"**§ 7B-600. Appointment of guardian.**

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has appointed a relative or other suitable person as guardian of the person for a juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a

parent's home unless the court finds that the guardian is unfit, or has neglected a guardian's duties, or is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition pursuant to G.S. 7B-906(b)(4), 7B-906(b)(5), or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian's fitness or ability to continue assuming a guardian's duties and consider their recommendations for the disposition of the motion or petition.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

HB 1634:
Guardianship Revisions.

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representatives Earle, Clary, and Easterling.
Date:	June 6, 2000		
Version:	H1634-PCSSK-001	**Summary by:**	Brenda Carter Esther Manheimer Committee Counsel

SUMMARY: This bill is a recommendation of the Child Fatality Task Force. It makes changes with regard to the status of a guardian of the person of a juvenile.

CURRENT LAW:

Appointment of a Guardian of the Person of a Juvenile.

Under G.S. 7B-600, in any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian operates under the supervision of the court and has the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court.

Where Custody is Removed, Court Must Conduct a Review Hearing.

G.S. 7B-907 provides that in any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge is required to conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody. The purpose of the permanency hearing is to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile.

BILL ANALYSIS:

Where Guardianship is the Permanent Plan for the Juvenile.

This bill amends the law regarding the appointment of guardians in juvenile matters involving abuse, neglect, and dependency to provide that in a case where the court has determined that the appointment of a relative or other suitable person is in the best interest of the juvenile and has found that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order the that the juvenile be reintegrated into a parent's home unless the court finds any of the following:

1. The relationship between the juvenile and guardian is no longer in the juvenile's best interest.
2. The guardian is unfit.
3. The guardian has neglected a guardian's duties.
4. The guardian is unwilling or unable to continue assuming a guardian's duties.

Review Hearing of the Custody Order.

Under current law, where custody has been removed, a review hearing must be conducted within 90 days under G.S. 7B-906, and a permanency planning hearing must be conducted within 12 months under G.S. 7B-907. In addition, a party may file a petition or motion for a review hearing of the custody order under G.S. 7B-906 or 7B-1000(a). When a party files such a petition or motion, this bill would require the court to enforce the restrictions on termination of custody listed above in cases where guardianship of the person is the permanent plan of the juvenile. This bill would allow the court to take the following actions while conducting the review hearing:

1. Order the county department of social services to conduct an investigation, file a report, and give testimony regarding the performance of the guardian.
2. Use community resources to study the guardian's fitness.
3. Ensure that a guardian ad litem has been appointed for the juvenile.
4. Take any other action necessary in order to make a determination.

EFFECTIVE DATE: The bill would become effective October 1, 2000.

VISITOR REGISTRATION SHEET

JTV
Name of Committee

June 6, 2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patricia Rawlen	NCACC
Tim Maples	NC CHILD ADVOCACY INST.
Chris Sinha	NCAG / NCDSS
Chuck Harris	DITTS - DSS
Debra Sasser	AOC - GAL
[illegible]	AOC
Martha Lowrance	YAFO
Sona Shandilya	NCCADV

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 20, 2000
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 1609 Clarify Juvenile Procedures (2nd Edition)
Sponsor: Rep. Earle

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 20, 2000 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, June 20, 2000, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Decker, Earle, Jeffus, Justus, McMahan, Pope, Saunders, and Weiss. Robin Johnson and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

HB 1609 Clarify Juvenile Procedures. The Chair recognized Robin Johnson, Staff Attorney, to explain the amendments that were offered on the House floor. These amendments are attached for the record. Rep. Earle explains how Rep. Capps' amendments would change the bill with regard to the Central Registry, and she notes that she does not want to see major changes made to the registry in this bill. Rep. Capps was recognized to explain the amendment that he offered on the floor. The purpose of the amendment would be to expunge the records of individuals whose names appear on the Central Registry without substantiated evidence. Chuck Harris of the Division of Social Services was on hand to answer questions from the members with regard to how the registry works and the number of substantiated and unsubstantiated cases that are reported each year. Following much discussion and debate from the members of the committee, Rep. Baddour appointed a subcommittee to discuss this issue further, and report to the next meeting. Rep. Thomas, Chair; Rep. Earle, and Rep. Pope.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1609*
Committee Substitute Favorable 6/6/00

Short Title: Clarify Juvenile Procedures. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND DEPENDENT JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-406(b) reads as rewritten:

"(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the

purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent."

Section 2. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion 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.~~ petition or motion. 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-1111(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-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 3. G.S. 7B-1102 reads as rewritten:

"**§ 7B-1102. Pending child abuse, neglect, or dependency ~~hearings.~~ proceedings.**

~~When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5.~~

(a) When the district court is exercising jurisdiction over a juvenile and the juvenile's parent in an abuse, neglect, or dependency proceeding, a person or agency

specified in G.S. 7B-1103(a) may file in that proceeding a motion for termination of the parent's rights in relation to the juvenile.

(b) A motion pursuant to subsection (a) of this section and the notice required by G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

(1) Service must be in accordance with G.S. 1A-1, Rule 4, if the person or agency to be served was not served originally with summons, or by published notice if service was by publication, that included notice substantially in conformity with the notice required by G.S. 7B-406(b)(4)e.

(2) In any case, the court may order that service of the motion and notice be made pursuant to G.S. 1A-1, Rule 4.

The parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(c) When a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, the court on its own motion or motion of a party may consolidate the action pursuant to G.S. 1A-1, Rule 42."

Section 4. G.S. 7B-1103 reads as rewritten:

"**§ 7B-1103. Who may ~~petition.~~ file a petition or motion.**

(a) A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed ~~by:~~ by one or more of the following:

(1) ~~Either~~ parent seeking termination of the right of the other ~~parent; or~~ parent;

(2) ~~Any~~ person who has been judicially appointed as the guardian of the person of the ~~juvenile; or~~ juvenile.

(3) ~~Any~~ county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent ~~jurisdiction; or~~ jurisdiction.

(4) ~~Any~~ county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701; or~~ 48-3-701.

(5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the ~~petition; or~~ petition or motion.

(6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility and who has served in this capacity for at least one continuous year; or~~ responsibility.

(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

(b) Any person or agency that may file a petition under subsection (a) of this section may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a motion to terminate parental rights."

Section 5. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. ~~Petition.~~ Petition or motion.**

The ~~petition~~ petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled 'In Re (last name of ~~juvenile)",~~ juvenile), a minor ~~juvenile;~~ juvenile'; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one ~~entitled to petition under G.S. 7B-1103.~~ authorized by G.S. 7B-1103 to file a petition or motion.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the ~~petitioner,~~ petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference.

(4) The name and address of any person who has been judicially appointed as guardian of the person of the ~~juvenile pursuant to the provisions of Chapter 35A of the General Statutes, or of G.S. 7B-600.~~ juvenile.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the ~~petition.~~ petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

Section 6. Article 11 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.**

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare a notice directed to each of the following persons or agency, not otherwise a movant:

(1) The parents of the juvenile.

(2) Any person who has been judicially appointed as guardian of the person of the juvenile.

(3) The custodian of the juvenile appointed by a court of competent jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the juvenile has been given by a court of competent jurisdiction.

(5) The juvenile's guardian ad litem if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.

(6) The juvenile, if the juvenile is 12 years of age or older at the time the motion is filed.

Provided, no notice need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the movant. The notice shall notify the person or agency to whom it is directed to file a written response within 30 days after service of the motion and notice. Service of the motion and notice shall be completed as provided under G.S. 7B-1102(b).

(b) The notice required by subsection (a) of this section shall include all of the following:

(1) The name of the minor juvenile.

(2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.

(3) Notice that any attorney appointed previously to represent the parent in the abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.

(4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.

(5) Notice that the date, time, and place of hearing will be mailed by the clerk upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a movant, is served with a motion seeking termination of a parent's rights, the director shall file a written response and shall be deemed a party to the proceeding."

Section 7. G.S. 7B-1107 reads as rewritten:

"**§ 7B-1107. Failure of ~~respondents to answer.~~ parent to answer or respond.**

Upon the failure of ~~the respondents~~ a respondent parent to file written answer to the petition or written response to the motion ~~with the court~~ within 30 days after service of the summons and ~~petition,~~ petition or notice and motion, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court shall issue an order terminating all parental and custodial rights of ~~the respondent or respondents~~ that parent with respect to the juvenile; provided the court shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the ~~petition.~~ petition or motion."

Section 8. G.S. 7B-1108 reads as rewritten:

"**§ 7B-1108. ~~Answer of respondents.~~ Answer or response of parent.**

(a) Any respondent may file a written answer to the ~~petition.~~ petition or written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the ~~petition,~~ petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. ~~7B-1103.~~ 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days to the ~~petitioner,~~ petitioner or movant, the ~~answering respondent,~~ respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and ~~answer.~~ answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the ~~petitioner,~~ petitioner or movant, respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings

under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

Section 9. G.S. 7B-1109 (b) and (f) read as rewritten:

"(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall appoint counsel to represent them. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination ~~petition.~~ petition or motion. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198.

. . .

(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. No ~~husband-wife or physician-patient privilege~~ privilege, except the attorney-client privilege, shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental ~~rights.~~ rights, both as the privilege relates to the competency of the witness and as it relates to the exclusion of confidential communications."

Section 10. G.S. 7B-1110 reads as rewritten:

"**§ 7B-1110. Disposition.**

(a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the ~~petition,~~ petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the ~~petition,~~ petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner or movant shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party.

(f) The court is not bound by the usual rules of evidence at disposition."

Section 11. G.S. 7B-1111 reads as rewritten:

"**§ 7B-1111. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the ~~petition,~~ petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition or motion.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence."

Section 12. G.S. 7B-1112 reads as rewritten:

"**§ 7B-1112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the ~~petition,~~ petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the ~~petitioner,~~ petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile."

Section 13. This act becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1609

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

H1609-ARH-001

Date JUN 15 2000, 2000

Comm. Sub. [X]
Amends Title []
Second Edition

Representative Earle

moves to amend the bill on page 7, lines 19-23, by rewriting the lines to read:

"husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights.'";

and on page 7, line 42, by adding quotation marks at the end of that line;

and on page 7, line 43, by deleting the line.

SIGNED B Earle
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED JUN 15 2000 FAILED _____ TABLED _____

108-1 ev

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1609

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

H1609-ALY-002A

Date JUN 15 2000 ,2000

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

Representative Capps

moves to amend the bill on page 10, line 8, by adding two new sections to read:

"Section 13. G.S. 7B-311 reads as rewritten:

'§ 7B-311. Central registry.

The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to policies adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. The Department shall remove from the registry any data about a case of alleged abuse or neglect of a juvenile by that juvenile's parent when the case is not substantiated by the local department of social services. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law.'

Section 14. G.S. 7B-2901 reads as rewritten:

'§ 7B-2901. Confidentiality of records.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1609

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

H1609-ALY-002A

(a) ~~The~~ Subject to the provisions of subsection (a1) of this section, the clerk shall maintain a complete record of all juvenile cases filed in the clerk's office alleging abuse, neglect, or dependency. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the court.

(a1) The court shall, upon motion or petition of the parent, order that the complete record of the case be destroyed in any case in which alleged abuse or neglect of a juvenile by a parent has not been proven by clear and convincing evidence.

(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them.

(c) In the case of a child victim, the court may order the sharing of information among such public agencies as the court deems necessary to reduce the trauma to the victim.

(d) The court's entire record of a proceeding involving consent for an abortion on an unemancipated minor under Article

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1609

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

H1609-ALY-002A

1A, Part 2 of Chapter 90 of the General Statutes is not a matter of public record, shall be maintained separately from any juvenile record, shall be withheld from public inspection, and may be examined only by order of the court, by the unemancipated minor, or by the unemancipated minor's attorney or guardian ad litem.'";

and by renumbering the remaining subsection accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1609

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 6-15-00

Amendment No. Perfecting #2 3

(to be filled in by Principal Clerk)

Rep.) Hackney

~~Sen.~~)

Capps Amendment #2

moves to amend the ~~bill~~ on page 1, line 22

( ) WHICH CHANGES THE TITLE to page 3, line 7

by deleting said lines

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1609:
Clarify Juvenile Procedures.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Capps (#2); Hackney (#3)
Date:	June 19, 2000	**Summary by:**	Robin Johnson Committee Counsel
Version:	Floor Amendments # 2 & 3		

SUMMARY: ***The bill (2nd Edition) would allow the filing (and clarify the procedure for) a motion to terminate parental rights in a pending juvenile abuse, neglect, or dependency (A, N, or D) proceeding. The bill, along with three floor amendments, was re-referred to this committee. Rep. Earle, the sponsor, offered Amendment #1, which passed. The other two amendments, Rep. Capps' Amendment #2 and Rep. Hackney's perfecting Amendment #3 were debated but not adopted.***

Rep. Capps' amendment would amend HB 1609 to add two new sections. Rep. Hackney's amendment would delete the second new section offered in Rep. Capps' amendment. Rep. Capps' amendment would require DHHS to remove all information about an alleged case of A, N, or D from the central registry when a local department of social services (DSS) does not substantiate a report of A, N, or D. The second new section proposed in Amendment # 2 (which would be deleted if Rep. Hackney's perfecting amendment is passed) would, upon the parent's motion or petition, require the juvenile court to expunge the complete record of a case where alleged A or N is not proven by clear and convincing evidence.

CURRENT LAW: **Central Registry**: G.S. 7B-307(c) requires DSS directors to "submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry. " G.S. 7B-311 directs DHHS to maintain the central registry and provides that the data furnished to the registry is confidential, subject to policies adopted by the Social Services Commission. The information in the registry may not be used at any hearing or court proceeding unless the information is based upon a final court judgment.

The law requires persons to report to DSS when they have cause to suspect a juvenile is A, N, or D, or has died as the result of maltreatment. When it receives a report, DSS first determines whether to "accept" the report. (These reports generally are not accepted when there is a failure to meet the definition of A, N, or D.) If DSS accepts the report, DSS investigates to determine whether the allegation is substantiated or not. DSS does not pursue unsubstantiated reports. Substantiated cases may result in a treatment plan or in the filing of a petition in the juvenile court for A, N, or D.

Upon its determination that a report is substantiated or not, DSS must make a report to the Central Registry. In the case of UNSUBSTANTIATED cases, no information is reported that would specifically identify the alleged perpetrator. The following information must be reported: (i) investigating county's name; (ii) county case number; (iii) case manager's name and social security number; (iv) date of initial report of A, N, or D; (v) date investigation was initiated; (vi) date investigation was completed; (vii) "client identification" number (to identify the juvenile); (viii) juvenile's name; (ix) a code to identify the referral source; (x) a code to identify the type of report received (A, N, A & N, or D); and (xi) a code to identify the DSS findings (unsubstantiated, A, N, A & N, or D). DSS may report the following information if applicable and if not currently in the system: (i) juvenile's social security number, birthdate, sex, race, school and grade; (ii) special areas (?); and (iii) juvenile's living arrangement. When a case is SUBSTANTIATED, information about the alleged perpetrator is reported. The above information must be reported plus the following: (i) a family risk assessment rating; (ii) a code to clearly

define the maltreatment; (iii) the perpetrator's relationship to the juvenile; (iv) the perpetrator's name, birthdate, age, race, sex, and social security number; and (v) if applicable, the name of an involved day care, group home, or institution. If applicable, the report will indicate whether a petition has been filed in juvenile court, whether criminal charges have been filed, and whether certain post investigation services are to be opened for the juvenile.

Expungement of A, N, or D records: When a case is unsubstantiated, there currently is no mechanism to remove any of the information from the registry. The purpose of the registry appears to be twofold: (1) to provide a centralized location for one county to find out whether there have been A, N, or D reports made in another county or state; and (ii) to provide required information to the federal government as a condition of receipt of significant federal funds.

If a report is substantiated and if a petition is filed in juvenile court alleging A, N, or D, the judicial records related to these proceedings are not public. G. S. 7B-3200 does allow for the expungement of juvenile court records related to a delinquency or undisciplined juvenile proceeding. No comparable provision is allowed for A, N, or D proceedings.

BILL ANALYSIS: The first part of Amendment #2 would amend G.S. 7B-311, which governs the confidentiality of the information in the central registry. It would require DHHS to remove ALL information about an unsubstantiated report of A, N, or D. It is possible that this change could lead to a significant fiscal impact if the federal government requires this information as a condition of federal funds.

The second part of Amendment #2 (which the perfecting amendment would delete) would amend G. S. 7B-2901, which governs the confidentiality of juvenile court records in A, N, or D proceedings. It would require, upon a motion or petition of a parent, the complete expungement of the judicial record where the alleged A or N of the juvenile by a parent has not been proven by clear and convincing evidence. (If the court finds the A, N, or D allegations have not been proven by clear and convincing evidence, the court must dismiss the petition with prejudice.) The amendment would allow either parent to make a motion or file a petition to expunge the record. It would REQUIRE the court to expunge the record without a hearing on the matter.

Under a comparable criminal law, G.S. 15A-146, which governs the expungement of criminal records, a person may petition for expungement if felony or misdemeanor charges are dismissed or there is a not guilty finding. The court must hold a hearing on the matter and find that the person has not received a prior expungement or been convicted of another felony. The person is responsible for the costs related to the petition.

The second part of the amendment does not address the "record" of a substantiated A, N, or D case where no petition is filed in juvenile court to initiate a juvenile A, N, or D proceeding.

H1609-SMRH-003

VISITOR REGISTRATION SHEET

JJC
Name of Committee

June 20, 2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephen Daniels	NCFPC
Tom Vitaglione	NC CHILD ADVOCACY INST.
Thomas V. Bennett	NCFTF
Sharon Hirsch	NC Social Services Commission
Martha LaVance	YAFJO
PB Powell	ACC
Paula A. Wolf	Covenant W/NC's Children
Newt Hurdle	AG office
Steve Nelson	AOC
Janet Mason	JOG
Chuck Harrell	DHHS- DSS
JoAnn Lamm	DHHS-DSS
Sona Shandilya	NCCADV
Amanda Abrams	Covenant w/ NC's children
Greg Owens	ACLU-NC
Jonathan Horowitz	ACLU-NC
Sara Singleton	Governors Office

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 22, 2000
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

SUBCOMMITTEE REPORT:

HB 1609 Clarify Juvenile Procedures
Chair: Rep. Thomas

BILLS TO BE CONSIDSERED:

SB 1340 Guardianship Revisions
Sponsor: Sen. Wellons

HB 1616 Abandoned Infant Protection Act
Sponsor: Rep. Haire

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 22, 2000 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, June 22, 2000, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, Earle, Jeffus, Justus, McMahan, Pope, Saunders, and Weiss. Robin Johnson and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

SB 1340 Guardianship Revisions. Rep. Baddour recognized Sen. Allen Wellons, bill sponsor, to explain the bill. Rep. Haire moved that the committee substitute be adopted for the purposes of discussion. Motion passed. Sen. Wellons noted that this bill is the companion to HB 1634 that passed JIV on June 6, 2000, and the text of the proposed committee substitute is exactly the same as the House bill. Without any further discussion, Rep. Haire moved for a favorable report as to House committee substitute bill unfavorable as to Senate committee substitute bill. Motioned passed unanimously.

HB 1609 Clarify Juvenile Procedures. The Chair recognized Rep. Thomas for a report from the subcommittee. Rep. Thomas presented the committee with a proposed committee substitute that was prepared by the subcommittee, and without objection the committee substitute was adopted for purposes of discussion. Rep. Thomas explained that this new bill incorporated the floor amendments that were offered by Rep. Earle and Rep. Capps, and he pointed out that he did not know of any opposition to the bill in its current form. Rep. Baddour informed the committee that the inclusion of the study committee was necessary to address some of the unresolved issues outlined in a handout that he distributed to the members. That handout is attached for the record. Following comments from the members of the committee, Rep. Bowie moved that committee substitute bill #2, which changed the title, be given a favorable report unfavorable as to committee substitute bill #1. Motion passed unanimously.

HB 1616 Abandoned Infant Protection Act. Rep. Baddour recognized Rep. Haire, bill sponsor, to explain the bill. Rep. Haire outlined the bill, and then called on Tom Bennett of the North Carolina Child Fatality Task Force for comments on the bill. Mr. Bennett explained to the members of the committee that the purpose of the bill was to save the lives of babies, and he briefly addressed some of the objections to this legislation. Many members of the committee were recognized for comments on the bill, and discussion focused primarily on father's rights. No action was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

2000 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
S.B. 1340 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ 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)

5/25/00

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1340*
House Proposed Committee Substitute: S1340-PCSSK-001
This is a draft.

Short Title: Guardianship Revisions. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"**§ 7B-600. Appointment of guardian.**

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by

court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition under G.S. 7B-906 or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;
(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1340*
Judiciary II Committee Substitute Adopted 6/6/00

Short Title: Guardianship Revisions. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"**§ 7B-600. Appointment of guardian.**

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the

guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, or finds that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition pursuant to G.S. 7B-906(b)(4), 7B-906(b)(5), or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian's fitness or ability to continue assuming a guardian's duties and consider their recommendations for the disposition of the motion or petition.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that

guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

SB 1340:
Guardianship Revisions.

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Senators Wellons; Carpenter, and W. Martin
Date:	June 22, 2000	**Summary by:**	Brenda Carter Esther Manheimer Committee Counsel
Version:	S1340-PCSSK-001		

SUMMARY: This bill is a recommendation of the Child Fatality Task Force. It makes changes with regard to the status of a guardian of the person of a juvenile.

CURRENT LAW:

Appointment of a Guardian of the Person of a Juvenile.

Under G.S. 7B-600, in any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian operates under the supervision of the court and has the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court.

Where Custody is Removed, Court Must Conduct a Review Hearing.

G.S. 7B-907 provides that in any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge is required to conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody. The purpose of the permanency hearing is to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile.

BILL ANALYSIS:

Where Guardianship is the Permanent Plan for the Juvenile.

This bill amends the law regarding the appointment of guardians in juvenile matters involving abuse, neglect, and dependency to provide that in a case where the court has determined that the appointment of a relative or other suitable person is in the best interest of the juvenile and has found that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds any of the following:

1. The relationship between the juvenile and guardian is no longer in the juvenile's best interest.
2. The guardian is unfit.
3. The guardian has neglected a guardian's duties.
4. The guardian is unwilling or unable to continue assuming a guardian's duties.

Review Hearing of the Custody Order.

Under current law, where custody has been removed, a review hearing must be conducted within 90 days under G.S. 7B-906, and a permanency planning hearing must be conducted within 12 months under G.S. 7B-907. In addition, a party may file a petition or motion for a review hearing of the custody order under G.S. 7B-906 or 7B-1000(a). When a party files such a petition or motion, this bill would require the court to enforce the restrictions on termination of custody listed above in cases where guardianship of the person is the permanent plan of the juvenile. This bill would allow the court to take the following actions while conducting the review hearing:

1. Order the county department of social services to conduct an investigation, file a report, and give testimony regarding the performance of the guardian.
2. Use community resources to study the guardian.
3. Ensure that a guardian ad litem has been appointed for the juvenile.
4. Take any other action necessary in order to make a determination.

EFFECTIVE DATE: The bill would become effective October 1, 2000.

2000 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☒ Committee Substitute for
H.B. 1609 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND DEPENDENT JUVENILES.

☐ 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 committee substitute bill # 1.

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

☐ 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)

5/25/00

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1609-PCSRH-001A
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1609
Committee Substitute Favorable 6/6/00
THIS IS A DRAFT 21-JUN-00 12:08:22
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Juvenile Procedures. (Public)

Sponsors:

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AND CLARIFY THE PROCEDURES FOR FILING A MOTION TO TERMINATE PARENTAL RIGHTS IN A PENDING JUVENILE ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY WHETHER INFORMATION SHOULD BE EXPUNGED FROM CERTAIN RECORDS WHEN AN ABUSE, NEGLECT, OR DEPENDENCY REPORT IS NOT SUBSTANTIATED OR PROVEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-406(b) reads as rewritten:

"(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an

order designed to meet those needs and the objectives of the State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent."

Section 2. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion 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.~~ petition or motion. 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-1111(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-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 3. G.S. 7B-1102 reads as rewritten:

"§ 7B-1102. Pending child abuse, neglect, or dependency ~~hearings.~~ proceedings.

~~When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5.~~

(a) When the district court is exercising jurisdiction over a juvenile and the juvenile's parent in an abuse, neglect, or dependency proceeding, a person or agency specified in G.S. 7B-1103(a) may file in that proceeding a motion for termination of the parent's rights in relation to the juvenile.

(b) A motion pursuant to subsection (a) of this section and the notice required by G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

(1) Service must be in accordance with G.S. 1A-1, Rule 4, if the person or agency to be served was not served originally with summons, or by published notice if service was by publication, that included notice substantially in conformity with the notice required by G.S. 7B-406(b)(4)e.

(2) In any case, the court may order that service of the motion and notice be made pursuant to G.S. 1A-1, Rule 4.

The parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(c) When a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, the court on its own motion or motion of a party may consolidate the action pursuant to G.S. 1A-1, Rule 42."

Section 4. G.S. 7B-1103 reads as rewritten:

"**§ 7B-1103. Who may ~~petition.~~ file a petition or motion.**

(a) A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed ~~by:~~ by one or more of the following:

(1) Either parent seeking termination of the right of the other ~~parent; or~~ parent.

(2) Any person who has been judicially appointed as the guardian of the person of the ~~juvenile; or~~ juvenile.

(3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent ~~jurisdiction; or~~ jurisdiction.

(4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701; or~~ 48-3-701.

(5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the ~~petition; or~~ petition or motion.

(6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility and who has served in this capacity for at least one continuous year; or~~ responsibility.

(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

(b) Any person or agency that may file a petition under subsection (a) of this section may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a motion to terminate parental rights."

Section 5. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. ~~Petition.~~ Petition or motion.**

The ~~petition~~ petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled 'In Re (last name of ~~juvenile)",~~ juvenile), a minor ~~juvenile;~~ juvenile'; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one ~~entitled to petition under G.S. 7B-1103.~~ authorized by G.S. 7B-1103 to file a petition or motion.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the ~~petitioner,~~ petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference.

(4) The name and address of any person who has been judicially appointed as guardian of the person of the ~~juvenile pursuant to the provisions of Chapter 35A of the General Statutes, or of G.S. 7B-600.~~ juvenile.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the ~~petition.~~ petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

Section 6. Article 11 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare a notice directed to each of the following persons or agency, not otherwise a movant:

(1) The parents of the juvenile.

(2) Any person who has been judicially appointed as guardian of the person of the juvenile.

(3) The custodian of the juvenile appointed by a court of competent jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the juvenile has been given by a court of competent jurisdiction.

(5) The juvenile's guardian ad litem if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.

(6) The juvenile, if the juvenile is 12 years of age or older at the time the motion is filed.

Provided, no notice need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the movant. The notice shall notify the person or agency to whom it is directed to file a written response within 30 days after service of the motion and notice. Service of the motion and notice shall be completed as provided under G.S. 7B-1102(b).

(b) The notice required by subsection (a) of this section shall include all of the following:

(1) The name of the minor juvenile.

(2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.

(3) Notice that any attorney appointed previously to represent the parent in the abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.

(4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent

is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.

(5) Notice that the date, time, and place of hearing will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a movant, is served with a motion seeking termination of a parent's rights, the director shall file a written response and shall be deemed a party to the proceeding."

Section 7. G.S. 7B-1107 reads as rewritten:

"**§ 7B-1107. Failure of ~~respondents to answer.~~ parent to answer or respond.**

Upon the failure of ~~the respondents~~ a respondent parent to file written answer to the petition or written response to the motion ~~with the court~~ within 30 days after service of the summons and ~~petition,~~ petition or notice and motion, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court shall issue an order terminating all parental and custodial rights of ~~the respondent or respondents~~ that parent with respect to the juvenile; provided the court shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the ~~petition.~~ petition or motion."

Section 8. G.S. 7B-1108 reads as rewritten:

"**§ 7B-1108. ~~Answer of respondents.~~ Answer or response of parent.**

(a) Any respondent may file a written answer to the ~~petition.~~ petition or written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the ~~petition,~~ petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. ~~7B-1103.~~ 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment

of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days ~~to the petitioner, the answering respondent,~~ given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and ~~answer.~~ answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the ~~petitioner,~~ respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

Section 9. G.S. 7B-1109 (b) and (f) read as rewritten:

"(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall appoint counsel to represent them. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination ~~petition.~~ petition or motion. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact

sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198.

. . .

(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights."

Section 10. G.S. 7B-1110 reads as rewritten:

"**§ 7B-1110. Disposition.**

(a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the ~~petition,~~ petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the ~~petition,~~ petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner or movant shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party."

Section 11. G.S. 7B-1111 reads as rewritten:

"**§ 7B-1111. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101

or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the ~~petition,~~ petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or
c. Legitimated the juvenile by marriage to the mother of the juvenile; or
d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition or motion.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence."

Section 12. G.S. 7B-1112 reads as rewritten:

"**§ 7B-1112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent

to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the ~~petition,~~ petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the ~~petitioner,~~ petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile."

Section 13. The Legislative Research Commission shall study issues related to expungement of information from the central registry of abuse, neglect, and dependency cases or from judicial records of juvenile cases that alleged abuse, neglect or dependency. In particular, this study should consider whether expungement (i) from the central registry should be available when a local department of social services does not substantiate a report of abuse, neglect, or dependency or (ii) from the juvenile court record in a case where alleged abuse, neglect, or dependency is not proven by clear and convincing evidence. The Commission shall make recommendations to the 2001 Session of the General Assembly.

Section 14. This act becomes effective October 1, 2000.

HOUSE BILL 1609:
Clarify Juvenile Procedures.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Earle, Clary & Easterling
Date:	June 21, 2000	**Summary by:**	Robin Johnson
Version:	H1609-PCSRH-001A		Committee Counsel

SUMMARY: This PCS, recommended by the ad hoc subcommittee, would incorporate the following:

- *The Second Edition of the bill (i.e., the version that this committee reported out earlier).*
- *Representative Earle's floor amendment #1, which the House adopted.*
- *Changes suggested by the Administrative Office of the Court to clarify that the moving party is responsible for giving notice.*
- *A new Section 13 to direct the Legislative Research Commission to study issues related to expungement of information from the central registry of abuse, neglect, and dependency cases or from juvenile court records of cases that alleged abuse, neglect, or dependency.*
- *A change to the bill's title.*

The PCS would amend the Juvenile Code to clarify that termination of parental rights may occur by either a petition or by motion in a proceeding that alleges a juvenile is abused, neglected or dependent.

The bill would take effect October 1, 2000.

CURRENT LAW: Currently, the Juvenile Code authorizes the filing of a petition to initiate a proceeding to terminate parental rights of a juvenile. In addition, G.S. 7B-1102 allows a petition for termination of parental rights to be filed as a motion in a pending abuse, neglect or dependency proceeding.

SECTION-BY-SECTION BILL ANALYSIS:

Section 1. G.S. 7B-406(b) is amended to specify what must be included in a summons, which is issued to the parent, guardian, custodian, or caretaker upon the filing of a petition alleging abuse, neglect, or dependency. The proposed change would add to the summons a notice that the dispositional order or a subsequent order may terminate the parental rights of the respondent parent.

Section 2. G.S. 7B-1011 is amended to include the hearing of motions as part of the court's exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights.

Section 3. G.S. 7B-1102 is rewritten to provide that a motion for termination of parental rights may be filed in pending abuse, neglect, or dependency proceedings (changes from "hearings"). The proper procedure is also given for filing this motion. It further states that when a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, a motion may be filed to consolidate the action.

Section 4. G.S. 7B-1103 is amended to stipulate who may file a motion to terminate parental rights. It further states that the parties who petition or motion may intervene in pending abuse, neglect or dependency proceedings for the purpose of filing a motion to terminate parental rights. G.S. 7B-1103 also removes the requirement that the guardian ad litem must have served in that capacity for at least one continuous year in order to be able to file a petition or motion to terminate parental rights.

Section 5: G.S. 7B-1104 states what must be included in a motion to terminate parental rights.

Section 6: G.S. 7B-1106.1 is a new section that identifies to whom a notice must be sent upon the filing of a motion to terminate parental rights in a pending child abuse, neglect or dependency case. In addition to the persons that must be sent a summons when the petition seeks termination of parental rights, this new section requires the notice be sent to the juvenile's guardian ad litem if one has been appointed. The new section also specifies the information that must be included in this notice. It further states that if the county director of social services is served a motion seeking termination of a parent's rights, the director must file a written response to the motion and be a party to the proceeding if the director is not already involved.

Section 7: G.S. 7B-1107 is amended to identify the respondent as the parent and sets forth the time period that the parent must respond. Failure to respond in the time period provides the court with the right to proceed with a hearing to terminate parental rights.

Section 8: G.S. 7B-1108 is amended to conform the requirements of a response to a motion to terminate parental rights to the requirements applicable to the answer to a petition to terminate these rights. These requirements provide that, if the parent denies the allegations in the petition or motion, a guardian ad litem for the juvenile must be appointed unless the child is already represented, and an attorney must be appointed to represent the guardian ad litem if the guardian ad litem is not an attorney. Payments for their services will be the responsibility of the Administrative Office of the Court. The appointment of a guardian ad litem is not necessary if the parent does not deny the allegations, but the judge may appoint one to determine the best interest of the child.

Section 9: G.S.7B-1109, governing the adjudicatory hearing on termination, is amended to provide the same protections to parents in connection with a hearing on a motion that they have in connection with a hearing on a petition. If the parents are indigent, desire counsel, and are unable to afford counsel, the court shall appoint counsel and grant the necessary time for the counsel to prepare their defense to the termination petition or motion. If the parents refuse counsel and are present at the hearing, the judge shall determine their ability to proceed without counsel. Likewise, the burden of proof is on the petitioner or the movant. The findings of fact must be based on clear, cogent, and convincing evidence.

Section 10: G.S. 7B-1110 is amended to allow the court to deny a motion to terminate parental rights based on what is in the best interest of a child. Counsel for the petitioner or movant is responsible for serving a copy of the order to the guardian ad litem and the child if the child is at least 12 years old.

Section 11: G.S. 7B 1111, which provides the grounds for terminating parental rights, is amended to add the word "motion", or "movant".

Section 12: G.S. 7B-1112, governing the effects of a termination order, is also amended to add the word "motion" or "movant".

Section 13 directs the LRC to study issues related to expungement of certain records when an abuse, neglect, or dependency report is not substantiated or proven.

Section 14 provides that the act takes effect October 1, 2000.

This summary substantially contributed to by DSS.

H1609-SMRH-004

Unresolved Concerns with Central Registry and Child Abuse Findings

Currently, there is no way to appeal a DSS finding that a child abuse, neglect, or dependency (A, N, or D) report is substantiated.

- Should there be an appeal?
- If so, what should it be?
- Should there be a legal (i.e., statutory) definition of "substantiated" and "unsubstantiated"?

Currently, there is no way to expunge information from the Central Registry for A, N or D reports.

- What information is required for the purpose of receiving federal funding?
- In the states that allow for expungement, is there a connection to how the information may be used – for example, in employee criminal records checks? In other words, do states where the registry has the same level of confidentiality allow for expungement?
- If expungement is appropriate:
  - When should it be allowed – when juvenile reaches the age of 18 or a specific number of years after the information is entered on the registry?
  - Should it only be available for unsubstantiated cases?
  - Should there be prerequisites in addition to a time frame – for example, a requirement that no other A, N, or D reports have been made concerning the particular juvenile?

Currently, there is no way to expunge a juvenile court record where an allegation of A, N, or D is not proven by clear and convincing evidence.

- If expungement is appropriate, when should it be allowed?
- Should there be a hearing on the issue – similar to criminal expungement?
- Should there be other conditions?

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1616

Short Title: Abandoned Infant Protection Act. (Public)

Sponsors: Representatives Haire, Clary, Easterling (Primary Sponsors); Jarrell, Morris, Sherrill, Bowie, Cansler, Melton, Weiss, and West.

Referred to: Judiciary IV, if favorable, Appropriations.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. Notwithstanding the previous sentence, when a report alleges abandonment, the director shall immediately initiate an investigation and shall take appropriate steps to assume temporary custody of the juvenile and to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and state resources to ensure that the juvenile is not a missing child. All information

received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

Section 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~ custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A law enforcement officer, a department of social services worker, a health care provider as defined in G.S. 90-21.11 at a hospital or local or district health department, or an emergency medical technician at a fire station shall, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(c) Any adult may, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) An individual who takes an infant into temporary custody under subsection (b) or (c) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b) or (c) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

Section 3. G.S. 7B-1111(a) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a

reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

Section 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

Section 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

No parent shall be prosecuted under G.S. 14-322 or G.S. 14-322.1 for abandonment of an infant less than 15 days of age when that parent voluntarily delivers the infant to one of the following individuals and does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, at a hospital or at a local or district health department.

(2) A law enforcement officer at a police station or sheriff's department.

(3) A social services worker at a local department of social services.

(4) An emergency medical technician at a fire station.

(5) Any other adult of suitable discretion who willingly accepts the infant."

Section 7. The Department of Health and Human Services, Division of Public Health, shall develop a media campaign to inform the public of the provisions of this act. This media campaign shall contain information on responsible parenting in addition to information about the provisions of the Act. This media campaign shall be targeted at adolescents and young adults. This media campaign shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

Section 8. There is appropriated from the General Fund the sum of one hundred fifty thousand dollars ($150,000) for the 2000-2001 fiscal year to the Department of Health and Human Services, Division of Public Health, to implement the provisions of Section 7 of this act.

Section 9. Sections 1 through 6 of this act become effective December 1, 2000, and apply to acts committed on or after that date. The remainder of this act becomes effective July 1, 2000.

HB 1616:
Abandoned Infant Protection Act.

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representatives Clary, Easterling, and Haire; Bowie, Cansler, Jarrell, Melton, Morris, Sherrill, Weiss, and West
Date:	June 20, 2000		
Version:	First Edition	**Summary by:**	Brenda Carter and Esther Manheimer Committee Counsel

SUMMARY: House Bill 1616 provides that, if an infant is less than 15 days old, a parent may not be prosecuted for criminal abandonment of that infant and failure to provide child support if the parent voluntarily delivers the infant to a health care provider at a hospital or local health department, an officer at a police station or sheriff's department, a department of social services worker, an emergency medical technician at a fire station, or to any other adult of suitable discretion who willingly accepts the infant.

BILL ANALYSIS:

Abandoning an Infant Less than 15 Days of Age and Immunity from Prosecution.

Under current law, an abandoned juvenile may be taken into temporary custody by a law enforcement officer or a department of social services worker (G.S. 7B-500). In other words, the parent of a newborn infant who desires to abandon the infant could turn the infant over to an officer or to a department of social services worker. However, the parent is potentially subject to prosecution under the following statutes:

- G.S. 14-318.2 - Misdemeanor Child Abuse
- G.S. 14-318.4 - Felony Child Abuse
- G.S. 14-322 - Misdemeanor to refuse to provide child support
- G.S. 14-322.1 - Felony Abandonment

This bill would allow the parent of an infant less than 15 days of age to turn their child over to one of the following persons:

- A health care provider at a hospital or local health department,
- A law enforcement officer at a police station or sheriff's department,
- A department of social services worker at a local department of social services,
- An emergency medical technician at a fire station, or
- Any adult of suitable discretion who willingly accepts the infant.

In addition, the parent would not be subject to prosecution under G.S. 14-322, misdemeanor to refuse to provide child support, and G.S. 14-322.1, felony abandonment. The abandoning parent would not be subject to prosecution under G.S. 14-318.2, misdemeanor child abuse, for acts or omissions related to the care of the infant. Finally, abandoning parents who also commit felony child abuse could still be prosecuted under G.S. 14-318.4, but abandoning an infant according to the provisions of this bill would be treated as a mitigating factor in the sentencing of a conviction under G.S. 14-318.4.

Taking a Juvenile into Temporary Custody

The following persons **must** take an infant less than 15 days old into temporary custody without a court order when the infant is voluntarily delivered to the individual by the infant's parent and the parent does not express an intent to return for the infant:

- A law enforcement officer,
- A department of social services worker,
- A health care provider at a hospital or local health department, or
- An emergency medical technician at a fire station.

In addition, any adult **may**, under the same circumstances described above, take an infant less than 15 days old into temporary custody.

Obligation of the Individual Taking Temporary Custody.

Individuals taking an infant into temporary custody under the provisions of this bill must protect the health and well-being of the infant and must immediately inform the department of social services.

Identity of the Parents.

The individual may inquire as to the parent's identities and medical history but the parent is not required to provide this information.

Civil and Criminal Immunity.

Individuals taking an infant into temporary custody under the provisons of this bill are immune from civil or criminal liability under the temporary custody provisions of this bill so long as the individual acted in good faith. However, the immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Director of DSS to Initiate Investigation Immediately in Cases of Abandonment.

Under current law, when abuse of a juvenile is alleged, the director of DSS must initiate an investigation within 24 hours. When neglect or dependency is alleged the director must initiate the investigation within 72 hours (G.S. 7B-302(a)).

When abandonment is alleged, this bill would require the director to initiate an investigation immediately, to take temporary custody of the juvenile, and to secure an order of nonsecure custody. The director must also request that law enforcement investigate through the N.C. Center for Missing Persons and other resources whether or not the juvenile is not a missing child.

Termination of Parental Rights (TPR).

Under current law, a court may terminate parental rights upon various grounds including that the parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the TPR petition.

Under this bill, the court mat terminate parental rights when a parent voluntarily abandons an infant less than 15 days old without an intent to return for the infant for at least 60 consecutive days immediately preceding the filing of the petition.

Media Campaign and Appropriation.

This bill requires the Department of Health and Human Services, Division of Public Health, to develop a media campaign to inform the public of the provisions of the act, targeted at adolescents and young adults. The media campaign is to be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school

administrators. This bill would authorize the appropriation of $150,000 to the Department of Health and Human Services, Division of Public Health, to implement the media campaign.

Effective Date.

The provision regarding development of the media campaign is effective July 1, 2000. The statutory changes become effective December 1, 2000, and apply to acts committed on or after that date.

VISITOR REGISTRATION SHEET

JJC — 6-22-00

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shaquera Ransome	DSS
Abeid Hoda	A.G. office
Chuck Harris	DHHS/DSS
Debra Hassen	AOC/GAL
PE Powell	AOC
April Carson	ACLU-NC
Greg Owens	ACLU-NC
Roz Sawatt	NCCCA
Ruth Sappie	NCDOT
CPM Ed.	NC Equity
Kay Michaels	PPAD
Adrian Hirsch	NCSSC
Monroe V. Bennett	NCCFTF
Alicia Gruenebaum	YAIO
Amanda Abrams	Covenant w/ NC's Children
Myra Miller	NASW-NC
Martha Lowlaner	YAID
John Rust	NCFRC
Cathryn Slater	General Assembly

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 27, 2000
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 1607 Modernize Bail Bond Forfeitures
Sponsor: Rep. Culpepper

HB 1608 Amend Bail Bondsmen And Runners Law
Sponsor: Rep. Culpepper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 27, 2000 – 10:00 a.m.

The House Committee on Judiciary IV met on Tuesday, June 27, 2000, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Scott Thomas, Representatives Bowie, Culpepper, Decker, McMahan, Pope, Saunders, and Weiss. Robin Johnson and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 1607 Modernize Bail Bond Forfeitures. Rep. Baddour recognized Rep. Culpepper, bill sponsor, to present the bill. Rep. Culpepper moved that the committee adopt the proposed committee substitute for purposes of discussion. Motion passed. Rep. Culpepper explained that this bill was the recommendation of a study commission, and he then called on Robin Johnson, Staff Attorney, to give a section by section review of the bill. Mike Mann, representing the bail bondsmen, was present and he informed the committee that that the bail bondsmen were supporting the bill that was before the committee. Tom Andrews of the Administrative Office of the Courts added that the bill improved bail bond procedures, and that it was a consensus bill. Representatives of the District Attorneys and the Clerks of Court also attended the meeting to lend their support. Rep. Pope raised a question with regard to the death provision, and the omission of this provision raised much concern among the members. Rep. Baddour displaced the bill, until this issue could be resolved.

HB 1608 Amend Bail Bondsmen And Runners Law. Rep. Baddour recognized Rep. Culpepper, bill sponsor, to explain the bill. Mike Mann, representing the bail bondsmen, spoke in support of the bill. Rep. Thomas raised a question with regard to the provision that addressed the death or terminal illness of a bail bondsmen. Rep. Culpepper offered an amendment changing terminal illness to incapacitation, and Rep. Thomas moved that the amendment be adopted. Motion passed. Debate on the bill continued until the meeting adjourned, and no action was taken.

The meeting adjourned at 10:50 a.m. to reconvene at 1:00 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1607-PCSRH-001a
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1607
THIS IS A DRAFT 26-JUN-00 19:00:09
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors:

Referred to: Judiciary IV

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"**§ 15A-531. Definitions.**

As used in this Article the following definitions apply unless the context clearly requires otherwise:

~~(1) Bail Bond. -- An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all~~

~~purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.~~

~~(2) Obligor. -- A principal or a surety on a bail bond.~~

~~(3) Principal. -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety. -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(1a) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond under G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.

b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent

registered with the clerk of superior court under G.S. 58-71-140,

c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court under G.S. 58-71-140,

d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court under G.S. 58-71-140.

(1b) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(1c) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company is considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a bail agent is not considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(1d) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(1e) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(3a) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes, and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(4) 'Surety' means:

a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.

b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.

c. The accommodation bondsman, when a bail bond is executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"**§ 15A-540. Surrender of a ~~principal~~ defendant by a surety; setting new conditions of release.**

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the clerk. Upon application by the surety after the surrender of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear, or to the sheriff where the

defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety under subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release under this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required under a prior release order."

Section 3. G.S. 15A-543(a) reads as rewritten:

"(a) In addition to forfeiture imposed under ~~G.S. 15A-544,~~ Part 2 of this Article, any person released pursuant to this Article who willfully fails to appear before any court or judicial official as required is subject to the criminal penalties set out in this section."

Section 4. G.S. 15A-544 is repealed.

Section 5. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.

Bail.

Part 1. General Provisions."

Section 6. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be

bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"§ 15A-544.2. Identifying information on bond.

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety,

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

"§ 15A-544.3. Entry of provisional judgment.

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a provisional judgment for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The provisional judgment shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the provisional judgment is entered.

(8) The date on which the provisional judgment will become final under G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: 'TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A provisional judgment for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above on the date of provisional judgment shown above. This provisional judgment will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, or (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question. The provisional judgment will not be set aside for any other reason. If this provisional judgment is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the judgment will become final on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full.'

"**§ 15A-544.4. Notice of provisional judgment.**

(a) The court shall give notice of the entry of provisional judgment by mailing a copy of the provisional judgment to the defendant and to each surety whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If a bail agent on behalf of an insurance company executed the bond, the court shall also provide a copy of the provisional judgment to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given under this section is effective when the notice is mailed.

(e) Notice under this section shall be mailed not later than the thirtieth day after the date on which the provisional judgment is entered. If notice under this section is not given within the prescribed time, the provisional judgment shall not become final and shall not be enforced or reported to the Department of Insurance.

"**§ 15A-544.5. Setting aside provisional judgment of forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a provisional judgment except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. Subsections (f), (g), (h), and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside -- A provisional judgment shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(c) Procedure When Failure to Appear Is Stricken. -- If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any provisional judgment of the forfeiture of that bail bond. When an order setting aside a provisional judgment of the forfeiture of the bail bond is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a provisional judgment is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given under G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the provisional judgment be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion is filed in the office of the clerk of superior court of the county in which the provisional judgment was entered, and a copy is served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion is served, the clerk shall enter an order setting aside the provisional judgment.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial

division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the provisional judgment.

(7) If at the hearing the court does not enter an order setting aside the provisional judgment, the provisional judgment shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Provisional Judgment. -- No more than one motion to set aside a specific provisional judgment may be considered by the court.

(f) No More Than Two Provisional Judgments May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment of forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Provisional Judgment Is Set Aside. -- If a provisional judgment is set aside under this section, the provisional judgment shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a provisional judgment is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions the court considers appropriate.

"**§ 15A-544.6. Final judgment of forfeiture.**

A provisional judgment of forfeiture entered under G.S. 15A-544.3 becomes a final judgment of forfeiture without further action by the court and may be enforced under G.S. 15A-544.7, on the one hundred fiftieth day after notice is given under G.S. 15A-544.4, if:

(1) No order setting aside the provisional judgment under G.S. 15A-544.5 is entered on or before that date; and

(2) No motion to set aside the provisional judgment is pending on that date.

"§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.

(a) Final Judgment Docketed As Civil Judgment. -- When a provisional judgment has become a final judgment under this Part, the clerk of superior court, under G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment under this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. -- After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"§ 15A-544.8. Relief from final judgment of forfeiture.

(a) Relief Exclusive. -- There is no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment under this section is as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief

under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion is filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions it considers appropriate."

Section 7. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for ~~surrender; exoneration of obligors; refund of deposit.~~ surrender.**

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.~~

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together~~

~~with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 8. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1607*

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors: Representatives Culpepper; and Morris.

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"**§ 15A-531. Definitions.**

As used in this Article the following definitions apply unless the context clearly requires otherwise:

~~(1) Bail Bond. -- An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.~~

~~(2) Obligor. -- A principal or a surety on a bail bond.~~

~~(3) Principal. -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety. -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond pursuant to G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.

b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent registered with the clerk of superior court pursuant to G.S. 58-71-140,

c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court pursuant to G.S. 58-71-140,

d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court pursuant to G.S. 58-71-140.

(3) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(4) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a bail agent as defined in subdivision (3) of this section shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(5) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(6) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(7) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes, and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(8) 'Surety' means:

a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.

b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.

c. The accommodation bondsman, when a bail bond is "executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"**§ 15A-540. Surrender of a ~~principal~~ defendant by a surety; setting new conditions of release.**

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the clerk. Upon application by the surety after the surrender~~

~~of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear, or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety pursuant to subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release pursuant to this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required pursuant to a prior release order."

Section 3. G.S. 15A-544 is repealed.

Section 4. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.

Part 1. Bail."

Section 5. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance

with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"**§ 15A-544.2. Identifying information on bond.**

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

"**§ 15A-544.3. Entry of provisional judgment.**

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a provisional judgment for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The provisional judgment shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the provisional judgment is entered.

(8) The date on which the provisional judgment will become final pursuant to G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: 'TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A provisional judgment for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above on the date of provisional judgment shown above. This provisional judgment will be set

aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, or (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question. The provisional judgment will not be set aside for any other reason. If this provisional judgment is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the judgment will become final on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full."

"**§ 15A-544.4. Notice of provisional judgment.**

(a) The court shall give notice of the entry of provisional judgment by mailing a copy of the provisional judgment to the defendant and to each surety and bail agent whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If the bond was executed by a bail agent on behalf of an insurance company, the court shall also provide a copy of the provisional judgment to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given pursuant to this section shall be effective when the notice is mailed.

(e) Notice pursuant to this section shall be mailed not later than the thirtieth day after the date on which the provisional judgment is entered. If notice pursuant to this section is not given within the prescribed time, the provisional judgment shall not become final and shall not be enforced or reported to the Department of Insurance.

"**§ 15A-544.5. Setting aside provisional judgment of forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a provisional judgment except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. The provisions of subsections (f), (g), (h),

and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside -- A provisional judgment shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(c) Procedure When Failure to Appear Is Stricken. -- If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any provisional judgment of the forfeiture of that bail bond. When an order setting aside a provisional judgment of the forfeiture of the bail bond is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a provisional judgment is not set aside pursuant to subsection (c) of this section, the only procedure for setting it aside shall be as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given pursuant to G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the provisional judgment be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the provisional judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion is served, the clerk shall enter an order setting aside the provisional judgment.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the provisional judgment.

(7) If at the hearing the court does not enter an order setting aside the provisional judgment, the provisional judgment shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Provisional Judgment. -- No more than one motion to set aside a specific provisional judgment may be considered by the court.

(f) No More Than Two Provisional Judgments May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment of forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Provisional Judgment Is Set Aside. -- If a provisional judgment is set aside pursuant to this section, the provisional judgment shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a provisional judgment shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as the court deems appropriate.

"§ 15A-544.6. Final judgment of forfeiture.

A provisional judgment of forfeiture entered pursuant to G.S. 15A-544.3 becomes final judgment of forfeiture without further action by the court and may be enforced pursuant to G.S. 15A-544.7, on the one hundred fiftieth day after notice is given pursuant to G.S. 15A-544.4, if:

(1) No order setting aside the provisional judgment pursuant to G.S. 15A-544.5 is entered on or before that date.

(2) No motion to set aside the provisional judgment is pending on that date.

"§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.

(a) Final Judgment Docketed As Civil Judgment. -- When a provisional judgment has become a final judgment pursuant to this Part, the clerk of superior court, pursuant to G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment pursuant to this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. -- After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"**§ 15A-544.8. Relief from final judgment of forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment pursuant to this section shall be as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as it considers appropriate."

Section 6. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.**

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.~~

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 7. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 8. There is appropriated to the Judicial Department in the Current Operations and Capital Improvements Appropriations Act for the 2000-2001 fiscal year, the sum of two hundred twenty-five thousand dollars ($225,000) to be used for temporary personnel, contract programming and training to implement the provisions of this act.

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

HOUSE BILL 1607:
Modernize Bail Bond Forfeitures

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Representative Culpepper
Date:	June 27, 2000	**Summary by:**	Robin Johnson
Version:	H1607-PCSRH-001A		Committee Counsel

SUMMARY: ***The PCS makes technical changes to and deletes the appropriation from the original bill. House Bill 1607, which is recommended by the LRC's Committee on Bail Bond Laws, seeks to modernize and clarify existing bail bond forfeiture statutes. This bill would establish clear procedures for the entry and finalization of forfeiture judgments. It would provide for notice to both bail agents and insurance companies who serve as sureties on bail bonds. It also would provide a three-year statute of limitations on motions that seek relief from final judgments of forfeiture.***

CURRENT LAW (generally): When a defendant is ordered to pay bond as a condition of release, the defendant may enter into an agreement with a bondsman (or surety) whereby the defendant pays a certain percentage of the required bond to the bondsman and promises to appear in court. The bondsman promises to pay the full amount of the bond if the defendant fails to appear. If the defendant, in fact, fails to appear, the court must enter an order of forfeiture against the bondsman. This order requires the bondsman to forfeit (i.e., pay) the bond. Currently, it is unclear who receives notice of this order, particularly when an agent for an insurance company is involved. The court must set aside the order if the defendant failed to appear because he or she is incarcerated in the State and was unable to appear. The court also may set aside the order if the surety files a motion, either in writing or orally, that asks for relief because the defendant's appearance when required was "impossible" or the defendant's failure to appear was not due to the defendant's "fault". After 60 days, the clerk prepares a forfeiture calendar that lists all the outstanding forfeiture orders. The judge signs these orders into absolute judgments, after which the surety has another 90 days within which relief may be requested. The forfeiture is stricken if, within those 90 days, the surety surrenders the defendant and the defendant is arrested OR the defendant is incarcerated or served an order for arrest and the defendant posts another bond or is released. After those 90 days and if the bondsman has not remitted the amount of the judgment, the sheriff has 10 days to locate the bondsman. After those 10 days, the sheriff must notify the clerks and magistrates in the prosecutorial district. The bondsman is then prohibited from becoming surety on additional bonds until the judgment is paid. After the judgment is executed, the court may, for extraordinary reasons shown, remit all or part of the amount paid.

BILL ANALYSIS: **Section 1** substantially amends the current definitions section in G.S. 15A-531. This section adds definitions for the terms "accommodation bondsman," "address of record," "bail agent," "defendant," "insurance company," and "professional bondsman." The definitions for "accommodation bondsman" and "professional bondsman" were taken verbatim from the definitions found in the Insurance chapter, G.S. 58-71-1. This section deletes the definition for "obligor" and rewrites the definition for "surety." This section also deletes the term "principal" and substitutes the term "defendant." In the statutes affected by the bill, wherever the term "principal" is found, it is substituted with the term "defendant."

Section 2 rewrites G.S. 15A-540, which sets forth the procedures to be followed when a bondsman surrenders a defendant before or after a breach of bail bond conditions. This section also sets forth new conditions of pretrial release when a bondsman surrenders a defendant after the defendant has breached a

condition of bail by failing to appear. This section allows the judicial official (usually a magistrate) to double the previous bond and to impose restrictions on the defendant's travel, associations, conduct or residence. This section also directs the magistrate to indicate on the release order that the defendant was surrendered after failing to appear as required by a previous release order.
Section 3 makes a conforming change to G.S. 15A-543.
Section 4 repeals G.S. 15A-544, which currently contains bail bond forfeiture procedures.
Section 5 amends the caption to Article 26 of Chapter 15A (Bail) to show that the Article is divided into two parts, the first of which is named "General Provisions".
Section 6 adds a new Part 2 to Article 26 of Chapter 15A. This new Part covers Bail Bond Forfeitures and creates several new statutes that provide reworked bail bond forfeiture procedures. These new sections are intended to clarify and simplify current statutory language.

G.S. 15A-544.1 makes both the defendant and each surety bound to the jurisdiction of the court without the necessity of any independent action.

G.S. 15A-544.2 lists identifying information that must be placed on a bail bond and identifies what will occur if the information is incomplete.

G.S. 15A-544.3 provides that a provisional judgment (rather than an order of forfeiture) will be entered against the defendant and the bondsman if the defendant fails to appear before a court as required by the bail bond. This section further lists all the information that must be contained in the notice of the provisional judgment.

G.S. 15A-544.4 provides the mailing procedures to be followed for giving notice of a provisional judgment to the defendant and each surety and bail agent whose name appears on a bail bond. In particular, if a bail agent on behalf of an insurance company executed the bond, notice of the provisional judgment will be provided to both the insurance company and the bail agent. This section makes it clear that failure to notify the bail agent will not affect the validity of the notice given to the insurance company.

G.S. 15A-544.5 sets forth four reasons for which a provisional judgment shall be set aside. These incorporate the reasons allowed under current law during both the first 60 days and the later 90 days. A provisional judgment must be set aside if:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled.

(2) All charges for which the defendant was bonded to appear have been finally disposed of by the court other than by the State's taking dismissal with leave.

(3) A surety on the bail bond has surrendered the defendant.

(4) The defendant has been served with an order for arrest for the failure to appear on the criminal charge.

This section clarifies that the procedure for setting aside a provisional judgment must occur within one time period, i.e. 150 days. It provides the procedures to follow when an order for arrest based on a failure to appear is stricken and the procedures for filing motions and holding hearings on whether to set aside a provisional judgment. . Only one motion to set aside a provisional judgment will be considered. Also, in cases where the surety or bail agent had notice or actual knowledge, prior to executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, the provisional judgment may not be set aside. Finally, this section sets forth the rules for appealing an order on a motion to set aside a provisional judgment.

G.S. 15A-544.6 provides that a provisional judgment becomes a final judgment on the 150th day after notice is given if no order has been entered to set aside the provisional judgment and no motion to set aside the provisional judgment is pending.

G.S. 15A-544.7 sets forth when a final judgment may be docketed as a civil judgment and become a lien against the real property of the defendant and each surety named in the judgment. This section also provides the rules for execution of a final forfeiture judgment. Until the final judgment is satisfied, sureties may not continue issuing bonds in the county (rather than in the prosecutorial district) in which the judgment is docketed.

G.S. 15A-544.8 sets forth the only reasons relief from a final judgment of forfeiture may be had. These include the lack of proper notice to necessary parties or other extraordinary circumstances. This section sets a three-year statue of limitations for a defendant or surety to seek relief from a final judgment of forfeiture. It further provides the rules for motions and appeals.

Section 7 amends and simplifies G.S. 58-71-25, from the Insurance chapter, which governs the procedure for a surety to surrender a defendant, by adopting the process found in the rewritten G.S. 15A-540.

Section 8 amends G.S. 24-5(a1), which covers interest on judgments, by making the interest calculation be based on the date of judgment docketing rather than the date of judgment entry.

Section 9 sets the bill's effective date as January 1, 2001. It applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

BACKGROUND: North Carolina's bail bond laws have been the subject of a great deal of focus both within and outside the General Assembly for a number of years. Though changes were made during the 1995 Session and suggested during later sessions, many parties still desired further modifications to these laws. During the interim, the Legislative Research Commission's Committee on Bail Bond Laws met three times, received a great deal of information, and heard the testimony of many interested parties. A working group was organized to come together and suggest language for a bill to modernize bail bond forfeiture laws. While there is not unanimous agreement by all parties as to exactly how to amend existing bail bond laws, this bill represents the product of that interested parties working group.

Al Andrews, Staff Attorney, Research Division, and Tom Andrews, Administrative Office of the Court, substantially contributed to this summary.

H1607-SMRH-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1608*

Short Title: Amend Bail Bondsmen and Runners Law. (Public)

Sponsors: Representatives Culpepper; and Morris.

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SUPERVISION OF FIRST-YEAR BAIL BONDSMEN AND RUNNERS; TO MAKE IT A CLASS I FELONY FOR A PERSON TO ACT AS A RUNNER OR BAIL BONDSMAN WITHOUT OBTAINING AND MAINTAINING THE REQUIRED LICENSE OR FOR A BONDSMAN TO KNOWINGLY AND WILLFULLY FAIL TO RETURN ANY COLLATERAL SECURITY VALUED AT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS; TO REQUIRE THAT COLLATERAL SECURITY IN THE FORM OF CASH OR NEGOTIABLE INSTRUMENTS BE HELD IN TRUST ACCOUNTS; TO PROVIDE FOR THE DISPOSITION OF OUTSTANDING BAIL BOND OBLIGATIONS UPON THE DEATH OR TERMINAL ILLNESS OF A BAIL BONDSMAN; AND TO INCREASE THE MINIMUM SECURITIES DEPOSIT REQUIRED OF PROFESSIONAL BONDSMEN.

The General Assembly of North Carolina enacts:

Section 1. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(4a) 'First-year licensee' means any person who has been licensed as a bail bondsman or runner under this Article and who has held the license for a period of less than 12 months."

Section 2. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(9a) 'Supervising bail bondsman' means any person licensed by the Commissioner as a professional bondsman or surety bondsman who employs or contracts with any new licensee under this Article."

Section 3. G.S. 58-71-40(a) reads as rewritten:

"(a) ~~No~~ It is a Class I felony for any person ~~shall~~ to act in the capacity of a bail bondsman or runner or perform any of the functions, duties, or powers prescribed for bail bondsmen or runners ~~under the provisions of this Article unless that person shall be qualified and (except as regards an accommodation bondsman) licensed in accordance with the provisions of~~ without obtaining and maintaining a license under this Article. No license shall be issued to a professional bondsman or runner except to an individual natural person."

Section 4. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-41. First-year licensees; limitations.**

(a) Except as provided in this section, a first-year licensee shall have the same authority as other persons licensed as a bail bondsman or runner under this Article. A first-year licensee shall operate only under the supervision of and from the business address of a licensed supervising bail bondsman, which address shall be on file with the Department. A first-year licensee may only be employed by or contract with one supervising bail bondsman and shall be limited to writing bail bonds within the judicial district or bordering judicial districts where the supervising bail bondsman maintains a place of business.

(b) When a first-year licensee has completed 12 uninterrupted months of supervision, the supervising bail bondsman shall give notice of that fact to the Commissioner in writing. If the licensee will continue to be employed by or contract with the supervising bail bondsman beyond the initial 12-month period, the supervising bail bondsman shall continue to supervise and be responsible for the licensee's acts.

(c) If the employment of or contract with a first-year licensee is terminated, the supervising bail bondsman shall notify the Commissioner in writing and shall specify the reason for the termination.

(d) Provided all other licensing requirements are met, an applicant for a bail bondsman or runner's license who has previously been licensed with the Commissioner for a period of at least three consecutive years and who has been inactive or unlicensed for a period of not more than three consecutive years shall not be deemed a new licensee for purposes of this section."

Section 5. G.S. 58-71-80 is amended by adding a new subsection to read:

"(c) In the case of a first-year licensee whose employment or contract is terminated prior to the end of the 12-month supervisory period, the Commissioner may consider all information provided in writing by the supervising bail bondsman in determining whether sufficient cause exists to suspend, revoke, or refuse to renew the license or to warrant criminal prosecution of the first-year licensee. If the Commissioner determines there is not sufficient cause for adverse administrative action or criminal prosecution, the termination shall not be deemed an interruption and the period of time the licensee was employed by or contracted with the terminating supervising bail bondsman will be credited toward the licensee's completion of the required 12 months of supervision with a subsequent supervising bail bondsman."

Section 6. G.S. 58-71-95(5) reads as rewritten:

"(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned within 72 hours after final termination of liability on the bond. Any bail bondsman who knowingly and willfully fails to return any collateral security, the value of which exceeds one thousand five hundred dollars ($1,500), is guilty of a Class I felony. All collateral security, such as personal and real property, subject to be returned must be done so under the same conditions as requested and received by the bail bondsman."

Section 7. G.S. 58-71-100 reads as rewritten:

"**§ 58-71-100. Receipts for ~~collateral.~~ collateral; trust accounts.**

When a bail bondsman accepts collateral he shall give a written receipt for ~~same,~~ the collateral. ~~and this~~ The receipt shall give in detail a full description of the collateral received. Collateral security shall be held and maintained in trust. When collateral security is received in the form of cash or check or other negotiable instrument, the licensee shall deposit the cash or instrument within two banking days after receipt, in an established, separate noninterest-bearing trust account in any bank located in North Carolina. The trust account funds shall not be commingled with other operating funds."

Section 8. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-121. Death or terminal illness of a bail bondsman.**

In the case of death or terminal illness of a licensed bail bondsman, the spouse or surviving spouse, next of kin, person or persons holding a power of attorney, or executor or administrator of the licensed bail bondsman may contract with another licensed bail bondsman to perform those duties to have the licensee's outstanding bail bond obligations resolved to the satisfaction of the courts. The terms and conditions of the contract must be mutually agreed upon by the parties. The contract must be filed with the Commissioner and every clerk of superior court where it can be determined the licensee has pending outstanding bail bond obligations. The licensed bail bondsman who has agreed to perform these duties shall not, at the time of the execution of the contract, have any administrative or criminal actions pending against him or her."

Section 9. G.S. 58-71-145 reads as rewritten:

"**§ 58-71-145. Financial responsibility of professional bondsmen.**

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one-eighth the amount of all bonds or undertakings written in

this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than ~~five thousand dollars ($5,000).~~ fifteen thousand dollars ($15,000)."

Section 10. G.S. 58-71-185 reads as rewritten:

"**§ 58-71-185. Penalties for violations.**

~~Any person, firm, association or corporation violating~~ Except as otherwise provided in this Article, any person who violates any of the provisions of this Article is guilty of a Class 1 misdemeanor."

Section 11. This act becomes effective October 1, 2000.

HB 1608:
Amend Bail Bondsmen and Runners Law

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Representatives Culpepper and Morris
Date:	June 27, 2000		
Version:	First Edition	**Summary by:**	Esther Manheimer Committee Counsel

SUMMARY: This bill requires all first-year bail bondsmen and runners to be supervised by a supervising bail bondsman. The bill also makes it a Class I felony to perform the duties of a bail bondsman or runner or fail to return collateral security exceeding $1,500. The bill requires that collateral security be held in trust. Finally, this bill creates provisions to be used in the event that a bail bondsman dies or becomes terminally ill and increases the financial requirement for bail bondsmen.

Bill Analysis:

First-Year Bail Bondsmen and Runners to be Supervised.

Under current law, all bail bondsmen and runners must be licensed by the Commissioner of Insurance. This bill would require that, in addition to being licensed, all first-year bail bondsmen and runners (first-year licensees) be supervised by a supervising bail bondsmen for a period of 12 consecutive months. A first-year licensee must be employed by or contract with a supervising bail bondsmen and may only write bail bonds within the supervising bail bondsman's judicial district or adjacent judicial districts. Note that the bill states that a new licensee is not a person who is reapplying for a license after a period of being inactive, provided that, that person had previously been licensed for a period of a least three consecutive years, and the period of inactivity prior to the new application does not exceed three consecutive years.

Completion of the 12-Month Supervision Period.

When the first-year licensee completes the one-year supervision period, the supervising bail bondsman must notify the Commissioner of Insurance. If, after the 12-month period, the licensee continues to be employed by the supervising bail bondsman then the supervising bail bondsman must continue to supervise and be responsible for the licensee.

Termination of a First-Year Licensee.

Supervising bail bondsmen that terminate a first-year licensee must notify the Commissioner of Insurance and specify why they terminated the licensee. The Commissioner may consider the information regarding the termination supplied by the supervising bail bondsman in order to determine if the first-year licensee's license should be suspended, revoked, denied renewal, or criminal prosecution is warranted. If the Commissioner determines that no adverse administrative action or criminal prosecution is necessary, then the termination will not be deemed to have interrupted the necessary 12 months of supervision the first-year licensee is required to acquire. When the first-year licensee begins working for another supervising bail bondsman, their previous employment will be credited towards the required 12 months of supervision.

Bail Bondsman/Runner Criminal Offenses.

Under current law, it is a Class 1 misdemeanor to perform the duties of a bail bondsman or runner without a license. This bill would make this offense a Class I felony. Additionally, this bill

would make it a Class I felony for a bail bondsman to knowingly and willfully fail to return collateral security exceeding $1,500 in value. Collateral security, such as personal and real property, must be returned under the same conditions as requested and received by the bail bondsman.

Collateral Security to be Held in Trust.

This bill requires that collateral security be held in trust. Collateral security received in the form of cash, check, or other negotiable instrument must be deposited in a separate non-interest bearing account in a bank in this State and cannot be commingled with other operating funds.

Death or Terminal Illness of a Bail Bondsman.

In the event that a bail bondsman dies or becomes terminally ill, a person acting on behalf of the bail bondsman may contract with another bail bondsman to have the deceased or ill bail bondsman's outstanding bail bond obligations resolved to the satisfaction of the court. The contract must be filed with the Commissioner of Insurance and with every clerk of superior court where it can be determined that the deceased or ill bondsman has outstanding bail bond obligations.

Financial Responsibility of Bail Bondsmen.

This bill would increase the minimum amount of the deposit that a bail bondsman is required to maintain with the Commissioner of Insurance from $5,000 to $15,000.

Effective Date.

This act becomes effective October 1, 2000.

10am

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

6/27/2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessie Forter	Bell & Associates
Ken Kelly	Moore Van Allen
BRANNY VICKORY	District Attorney - 8th District
Mark Spoon	Post Cathy - NCA D. Smith
Ric Bowen	Conference of D.A.s
Tom Ross	AOC
Ken Honeycutt	Dist. Atty. 20th Dist.
April Carson	A.C.L.U. - N.C.
Greg Owens	ACLU-NC
Guy Rowland	Bankers Insurance Group
David Fewell	NC Sheriffs Assn.
Fred Mohn	N.C. Dept. of Insurance
Mike Mason	FSI
Joanne Connell	NCSBA
Jim Wilson	Moore & VanAllen
Colon Willoughby	DA 10th Dist.
Tom Andrews	AOC
Becky Bowen	Albers Company - Bankers Insurance Group
John Kennedy	Association of Clerks of Superior Court
Jim Lawrence	Attorney
Reed LAWRENCE	STUDENT
MARK BLACK	NCBAA

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 27, 2000
1:00 P.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 1607 Modernize Bail Bond Forfeitures
Sponsor: Rep. Culpepper

HB 1608 Amend Bail Bondsmen And Runners Law
Sponsor: Rep. Culpepper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 27, 2000 – 1:00 p.m.

The House Committee on Judiciary IV met on Tuesday, June 27, 2000, in Room 421 LOB at 1:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Culpepper, Decker, Earle, and Saunders. Robin Johnson and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bills:

HB 1607 Modernize Bail Bond Forfeitures. Rep. Baddour recognized Rep. Culpepper to offer an amendment with regard to the provision judgement. Rep. Culpepper moved adoption of the amendment, and the motion passed. Rep. Culpepper was recognized for another amendment that set out two more instances when forfeiture can be set aside. Rep. Culpepper moved adoption of amendment #2 as perfected. Motion passed. Rep. Culpepper moved that the amendments be enrolled into a new committee substitute, and that the committee substitute be given a favorable unfavorable as to original bill. Motion passed.

HB 1608 Amend Bail Bondsmen And Runners Law. Rep. Baddour recognized Rep. Haire to send forth a clarifying amendment. Rep. Haire moved adoption of the amendment, and the motion passed. Rep. Culpepper moved that the amendment be enrolled into a new committee substitute, and that committee substitute be given a favorable report, unfavorable as to original bill. Motion passed.

The meeting adjourned at 1:30 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1607 A BILL TO BE ENTITLED AN ACT TO AN MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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 2

HOUSE BILL 1607*
Committee Substitute Favorable 6/28/00

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"**§ 15A-531. Definitions.**

As used in this Article the following definitions apply unless the context clearly requires otherwise:

~~(1) Bail Bond. — An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt~~

~~proceedings shall not be satisfied in any manner other than the deposit of cash.~~

~~(2) Obligor. -- A principal or a surety on a bail bond.~~

~~(3) Principal. -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety. -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(1a) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond under G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.

b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent registered with the clerk of superior court under G.S. 58-71-140.

c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court under G.S. 58-71-140.

d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court under G.S. 58-71-140.

(1b) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the

insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(1c) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company is considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a bail agent is not considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(1d) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(1e) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(1f) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(4) 'Surety' means:

a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.

b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.

c. The accommodation bondsman, when a bail bond is executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"**§ 15A-540. Surrender of a ~~principal~~ defendant by a surety; setting new conditions of release.**

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the clerk. Upon application by the surety after the surrender~~

~~of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant, the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant, the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety under subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release under this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required under a prior release order."

Section 3. G.S. 15A-543(a) reads as rewritten:

"(a) In addition to forfeiture imposed under ~~G.S. 15A-544,~~ Part 2 of this Article, any person released pursuant to this Article who willfully fails to appear before any court or judicial official as required is subject to the criminal penalties set out in this section."

Section 4. G.S. 15A-544 is repealed.

Section 5. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.
Bail.
Part 1. General Provisions."

Section 6. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"§ 15A-544.2. Identifying information on bond.

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

"§ 15A-544.3. Entry of forfeiture.

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a forfeiture for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The forfeiture shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the forfeiture is entered.

(8) The date on which the forfeiture will become a final judgment under G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: 'TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A forfeiture for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above on the date of forfeiture shown above. This forfeiture will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question, (v) the defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate, or (vi) the defendant was incarcerated in a unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear. The forfeiture will not be set aside for any other reason. If this forfeiture is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the forfeiture will become a final judgment on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full.'

"**§ 15A-544.4. Notice of forfeiture.**

(a) The court shall give notice of the entry of forfeiture by mailing a copy of the forfeiture to the defendant and to each surety whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If a bail agent on behalf of an insurance company executed the bond, the court shall also provide a copy of the forfeiture to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given under this section is effective when the notice is mailed.

(e) Notice under this section shall be mailed not later than the thirtieth day after the date on which the forfeiture is entered. If notice under this section is not given within the prescribed time, the forfeiture shall not become a final judgment and shall not be enforced or reported to the Department of Insurance.

"**§ 15A-544.5. Setting aside forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. Subsections (f), (g), (h), and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside. -- A forfeiture shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.

(6) The defendant was incarcerated in a unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear.

(c) Procedure When Failure to Appear Is Stricken. -- If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any forfeiture of that bail bond. When an order setting aside a forfeiture is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given under G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the

forfeiture be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion is filed in the office of the clerk of superior court of the county in which the forfeiture was entered, and a copy is served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the forfeiture.

(7) If at the hearing the court does not enter an order setting aside the forfeiture, the forfeiture shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Forfeiture. -- No more than one motion to set aside a specific forfeiture may be considered by the court.

(f) No More Than Two Forfeitures May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Forfeiture Is Set Aside. -- If a forfeiture is set aside under this section, the forfeiture shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions the court considers appropriate.

"**§ 15A-544.6. Final judgment of forfeiture.**

A forfeiture entered under G.S. 15A-544.3 becomes a final judgment of forfeiture without further action by the court and may be enforced under G.S. 15A-544.7, on the one hundred fiftieth day after notice is given under G.S. 15A-544.4, if:

(1) No order setting aside the forfeiture under G.S. 15A-544.5 is entered on or before that date; and

(2) No motion to set aside the forfeiture is pending on that date.

"§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.

(a) Final Judgment Docketed As Civil Judgment. -- When a forfeiture has become a final judgment under this Part, the clerk of superior court, under G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment under this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. -- After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"§ 15A-544.8. Relief from final judgment of forfeiture.

(a) Relief Exclusive. -- There is no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment under this section is as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion is filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions it considers appropriate."

Section 7. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for ~~surrender; exoneration of obligors; refund of deposit.~~ surrender.**

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.~~

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 8. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated 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) **Baddour** for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1608 A BILL TO BE ENTITLED AN ACT TO REQUIRE SUPERVISION OF FIRST-YEAR BAIL BONDSMEN AND RUNNERS; TO MAKE IT A CLASS I FELONY FOR A PERSON TO ACT AS A RUNNER OR BAIL BONDSMAN WITHOUT OBTAINING AND MAINTAINING THE REQUIRED LICENSE OR FOR A BONDSMAN TO KNOWINGLY AND WILLFULLY FAIL TO RETURN ANY COLLATERAL SECURITY VALUED AT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS; TO REQUIRE THAT COLLATERAL SECURITY IN THE FORM OF CASH OR NEGOTIABLE INSTRUMENTS BE HELD IN TRUST ACCOUNTS; TO PROVIDE FOR THE DISPOSITION OF OUTSTANDING BAIL BOND OBLIGATIONS UPON THE DEATH OR TERMINAL ILLNESS OF A BAIL BONDSMAN; AND TO INCREASE THE MINIMUM SECURITIES DEPOSIT REQUIRED OF PROFESSIONAL BONDSMEN.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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 2

HOUSE BILL 1608*
Committee Substitute Favorable 6/27/00

Short Title: Amend Bail Bondsmen and Runners Law. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SUPERVISION OF FIRST-YEAR BAIL BONDSMEN AND RUNNERS; TO MAKE IT A CLASS I FELONY FOR A PERSON TO ACT AS A RUNNER OR BAIL BONDSMAN WITHOUT OBTAINING AND MAINTAINING THE REQUIRED LICENSE OR FOR A BONDSMAN TO KNOWINGLY AND WILLFULLY FAIL TO RETURN ANY COLLATERAL SECURITY VALUED AT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS; TO REQUIRE THAT COLLATERAL SECURITY IN THE FORM OF CASH OR NEGOTIABLE INSTRUMENTS BE HELD IN TRUST ACCOUNTS; TO PROVIDE FOR THE DISPOSITION OF OUTSTANDING BAIL BOND OBLIGATIONS UPON THE DEATH OR TERMINAL ILLNESS OF A BAIL BONDSMAN; AND TO INCREASE THE MINIMUM SECURITIES DEPOSIT REQUIRED OF PROFESSIONAL BONDSMEN.

The General Assembly of North Carolina enacts:

Section 1. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(4a) 'First-year licensee' means any person who has been licensed as a bail bondsman or runner under this Article and who has held the license for a period of less than 12 months."

Section 2. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(9a) 'Supervising bail bondsman' means any person licensed by the Commissioner as a professional bondsman or surety bondsman who employs or contracts with any new licensee under this Article."

Section 3. G.S. 58-71-40(a) reads as rewritten:

"(a) ~~No~~ It is a Class I felony for any person ~~shall~~ to act in the capacity of a bail bondsman or runner or perform any of the functions, duties, or powers prescribed for bail bondsmen or runners ~~under the provisions of this Article unless that person shall be qualified and (except as regards an accommodation bondsman) licensed in accordance with the provisions of~~ without obtaining and maintaining a license under this Article. No license shall be issued to a professional bondsman or runner except to an individual natural person."

Section 4. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-41. First-year licensees; limitations.**

(a) Except as provided in this section, a first-year licensee shall have the same authority as other persons licensed as bail bondsmen or runners under this Article. A first-year licensee shall operate only under the supervision of and from the business address of a licensed supervising bail bondsman, which address shall be on file with the Department. A first-year licensee may only be employed by or contract with one supervising bail bondsman and shall be limited to writing bail bonds within the judicial district or bordering judicial districts where the supervising bail bondsman maintains a place of business.

(b) When a first-year licensee has completed 12 uninterrupted months of supervision, the supervising bail bondsman shall give notice of that fact to the Commissioner in writing. If the licensee will continue to be employed by or contract with the supervising bail bondsman beyond the initial 12-month period, the supervising bail bondsman shall continue to supervise and be responsible for the licensee's acts.

(c) If the employment of or contract with a first-year licensee is terminated, the supervising bail bondsman shall notify the Commissioner in writing and shall specify the reason for the termination.

(d) Provided all other licensing requirements are met, an applicant for a bail bondsman or runner's license who has previously been licensed with the Commissioner for a period of at least three consecutive years and who has been inactive or unlicensed for a period of not more than three consecutive years shall not be deemed a new licensee for purposes of this section."

Section 5. G.S. 58-71-80 is amended by adding a new subsection to read:

"(c) In the case of a first-year licensee whose employment or contract is terminated prior to the end of the 12-month supervisory period, the Commissioner may consider all information provided in writing by the supervising bail bondsman in determining whether sufficient cause exists to suspend, revoke, or refuse to renew the license or to warrant criminal prosecution of the first-year licensee. If the Commissioner determines there is not sufficient cause for adverse administrative action or criminal prosecution, the termination shall not be deemed an interruption and the period of time the licensee was employed by or contracted with the terminating supervising bail bondsman will be credited toward the licensee's

completion of the required 12 months of supervision with a subsequent supervising bail bondsman."

Section 6. G.S. 58-71-95(5) reads as rewritten:

"(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned within 72 hours after final termination of liability on the bond. Any bail bondsman who knowingly and willfully fails to return any collateral security, the value of which exceeds one thousand five hundred dollars ($1,500), is guilty of a Class I felony. All collateral security, such as personal and real property, subject to be returned must be done so under the same conditions as requested and received by the bail bondsman."

Section 7. G.S. 58-71-100 reads as rewritten:

"**§ 58-71-100. Receipts for ~~collateral.~~ collateral; trust accounts.**

When a bail bondsman accepts collateral he shall give a written receipt for ~~same,~~ the collateral. ~~and this~~ The receipt shall give in detail a full description of the collateral received. Collateral security shall be held and maintained in trust. When collateral security is received in the form of cash or check or other negotiable instrument, the licensee shall deposit the cash or instrument within two banking days after receipt, in an established, separate noninterest-bearing trust account in any bank located in North Carolina. The trust account funds shall not be commingled with other operating funds."

Section 8. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-121. Death, incapacitation, or incompetence of a bail bondsman.**

In the case of death, incapacitation, or incompetence of a licensed bail bondsman, the spouse or surviving spouse, next of kin, person or persons holding a power of attorney, guardian, executor or administrator of the licensed bail bondsman may contract with another licensed bail bondsman to perform those duties to have the licensee's outstanding bail bond obligations resolved to the satisfaction of the courts. The contract must be filed with the Commissioner and every clerk of superior court where it can be determined the licensee has pending outstanding bail bond obligations. The licensed bail bondsman who has agreed to perform these duties shall not, at the time of the execution of the contract, have any administrative or criminal actions pending against him or her."

Section 9. G.S. 58-71-145 reads as rewritten:

"**§ 58-71-145. Financial responsibility of professional bondsmen.**

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair

market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than ~~five thousand dollars ($5,000).~~ fifteen thousand dollars ($15,000)."

Section 10. G.S. 58-71-185 reads as rewritten:

"**§ 58-71-185. Penalties for violations.**

~~Any person, firm, association or corporation violating~~ Except as otherwise provided in this Article, any person who violates any of the provisions of this Article is guilty of a Class 1 misdemeanor."

Section 11. This act becomes effective October 1, 2000.

1pm

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

6/27/2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Bankers Insurance Group
[illegible]	ACLU-NC
[illegible]	NCSBA
John Kennedy	Assoc. of Clerks of Court
Jim Lawrence	Attorney
Fred Harper	Clerk
Fred Mohn	N.C. Dept. of Ins.
Tom Andrews	AOC

AGENDA

HOUSE JUDICIARY IV COMMITTEE

June 29, 2000
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 1637 Violent Caregiver Changes
Sponsor: Rep. Nesbitt

HB 1666 Durham Statute of Limitations
Sponsor: Rep. Miller

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV

June 29, 2000 – 10:00 a.m.

The House Committee on Judiciary IV met on Thursday, June 29, 2000, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Jeffus, Justus, McMahan, Saunders, and Weiss. Robin Johnson and Esther Manheimer, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order and introduced the Pages. He then called for consideration of the following bill:

HB 1637 Violent Caregiver Changes. Rep. Nesbitt, bill sponsor, was absent when the meeting began, but Rep. Baddour instructed the members to begin discussion of the bill. Rep. Saunders moved that the committee adopt the proposed committee substitute for purposes of discussion. Motion passed. Sharnese Ransome, Division of Social Services; JoAnn Lamm, Division of Social Services; and Tom Bennett, Child Fatality Task Force; were all present to speak on the bill and to address questions from members of the committee. Rep. Baddour called on Esther Manheimer, Staff Attorney, to explain the bill. A copy of the bill summary is attached for the record. The members of the committee had several questions with regard to the background check that is required by the bill. Ms. Manheimer addressed some of the Constitutional issues that have been raised, which are outlined in the bill summary. Rep. Nesbitt was recognized for comments on the bill before the meeting adjourned, and no action was taken on the bill.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1637*
Proposed House Committee Substitute: H1637-PCSSK-004
This is a draft.

Short Title: Violent Caregiver Changes. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ABILITY OF THE DIVISION OF SOCIAL SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND OF THE DISTRICT COURT TO PROTECT JUVENILES FROM VIOLENCE-PRONE CAREGIVERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-101(7a) reads as rewritten:

"7a) ~~"Criminal history" means a~~ Criminal history. -- A local, State, or federal criminal ~~history of~~ conviction or pending charge or indictment of a crime, whether a misdemeanor or a felony, involving violence against a ~~person.~~ person, including the North Carolina crimes involving violence against a person contained in the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 17, Robbery; Article 39, Protection of Minors; or similar crimes under federal law or under the laws of this or other states."

Section 2. G.S. 7B-302(d1) is repealed.

Section 3. G.S. 7B-304 reads as rewritten:

"§ 7B-304. Evaluation for ~~court.~~ court; criminal history check.

(a) In all cases in which a petition is filed, the director of the department of social services shall prepare a report for the court containing ~~the results of any mental health evaluation under G.S. 7B-503,~~ a home placement ~~plan,~~ plan and a treatment plan deemed by the director to be appropriate to the needs of the juvenile. The report shall be available to the court immediately following the adjudicatory hearing.

(b) In all cases in which a petition filed under G.S. 7B-402 alleges physical abuse by a parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care, the director shall conduct a thorough review of the background of that individual, including a criminal history check and a review of any available mental health records to determine if that individual has a histiry of violent behavior. The criminal history check of the alleged perpetrator shall be conducted as follows:

(1) The Division of Social Services, Department of Health and Human Services, shall provide to the Department of Justice the request for a criminal history check, the fingerprints of the alleged perpetrator to be checked, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. The fingerprints of the alleged perpetrator shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file. The State Bureau of Investigation shall then forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(2) At the time of the request for a criminal history check, the Division of Social Services shall ensure that the alleged perpetrator is notified of all of the following:

a. The criminal history records that will be checked.

b. The procedure for review of the criminal history information and for completing or challenging the accuracy of the criminal history check.

c. That the court shall condition the return of the juvenile's custody to that individual or to another person in whose home that individual remains, upon the completion of a criminal history check.

d. That any person who intentionally falsifies any information required to be furnished to conduct the criminal history check is guilty of a Class 2 misdemeanor.

(3) The Division of Social Services shall notify the director of the department involved in the case of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The director shall not release any portion of the criminal history file, but may disclose the contents to the individual checked and to the court in accordance with federal and State law regulating the dissemination of the contents of the criminal history file.

(4) All the information that the Division of Social Services receives from the Department of Justice through the checking of the criminal history is confidential and is for the exclusive use of the Division of Social Services and those persons authorized under this section to receive the information. The Division of Social Services may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(c) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, in carrying out the provisions of G.S. 7B-304(b) pertaining to a criminal history check. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General

Statutes, and to the extent sovereign immunity is waived under Article 31 of Chapter 143 of the General Statues.

(d) Any person who intentionally falsifies any information required to be furnished to conduct the criminal history check under subsection (b) of this section is guilty of a Class 2 misdemeanor.

(e) The criminal record acquired as a result of a criminal history check may be presented to and considered by the court at any hearing to determine the need for continued nonsecure custody and at any time following an adjudication that the juvenile is abused, neglected, or dependent."

Section 4. G.S. 7B-503 reads as rewritten:

"**§ 7B-503. Criteria for nonsecure custody.**

~~(a)~~ When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

(1) The juvenile has been abandoned; or

(2) The juvenile has suffered physical injury or sexual abuse; or

(3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or

(4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or

(5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order; or

(6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile

alleged to be abused, neglected, or dependent be placed in secure custody.

~~(b) Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the petition prior to returning the child to a home where the alleged abuser or abusers are or have been present. If the court finds that the alleged abuser or abusers have a history of violent behavior against people, the court shall order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The court may order the alleged abuser or abusers to pay the cost of any mental health evaluation required under this section.~~"

Section 5. G.S. 7B-506(c1) is repealed.

Section 6. G.S. 7B-506 is amended by adding a new subsection to read:

"(c2) The court may impose appropriate conditions, reasonably related to the health and safety of the juvenile, before releasing a juvenile from nonsecure custody. When it is alleged that the juvenile has suffered physical abuse at the hands of the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care, the court shall condition the juvenile's release from nonsecure custody and the return of the juvenile's custody to that individual or to another person in whose home that individual remains, upon a thorough review of the background of that individual under G.S. 7B-304(b). If a thorough review of the background of that individual reveals a history of violent behavior, the court shall order a mental health evaluation of that individual, and shall consider the opinion of the mental health professional who performed the evaluation in determining whether continued custody is warranted."

Section 7. G.S. 7B-903(b) reads as rewritten:

"(b) When the court has found that a juvenile has suffered physical abuse ~~and that the individual responsible for the abuse has a history of violent behavior against people, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.~~ at the hands of the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care, the court shall condition the return of the juvenile to the custody of that individual or to another person in whose home that individual remains upon a thorough review of the background of that individual under G.S. 7B-304(b). If a

thorough review of the background of that individual reveals a history of violent behavior, and a mental health evaluation is unavailable, the court shall order a mental health evaluation of that individual. The court may order the individual to undergo psychiatric, psychological, or other treatment or counseling under G.S. 7B-904(c) directed toward remediating or remedying the behavior or conditions that led to or contributed to the juvenile's adjudication or the court's decision to remove the juvenile from the home, and may condition the juvenile's return upon compliance with that order. The court shall consider the opinion of the mental health professional who performed the evaluation in determining whether continued custody is warranted."

Section 8. G.S. 7B-1003 reads as rewritten:

"**§ 7B-1003. Disposition pending appeal.**

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. ~~When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.~~ For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. In any case, a finding that the juvenile has suffered physical abuse shall be sufficient reason for entry of such an order. The provisions of ~~subsections (b), (c), and (d) of~~ G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

Section 9. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.10. Criminal history checks for violence-prone caregivers.**

In accordance with G.S. 7B-304(b) or G.S. 7B-903(b), the Department of Justice may provide from the State and National Repositories of Criminal Histories to the Division of Social Services, Department of Health and Human Services, the criminal history of a parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care, who has been alleged or found to have

inflicted physical abuse upon the juvenile. The Division of Social Services shall provide to the Department of Justice the request for a criminal history check, the fingerprints of the alleged perpetrator, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the criminal record check and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the alleged abuser shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file. The State Bureau of Investigation shall then forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division of Social Services shall keep all information acquired pursuant to this section confidential, as provided in G.S. 7B-304(b). The Department of Justice may charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 10. This act becomes effective January 1, 2001, and applies to petitions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1637*

Short Title: Violent Caregiver Changes. (Public)

Sponsors: Representatives Nesbitt, Easterling (Primary Sponsors); Sherrill and Melton.

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ABILITY OF THE DIVISION OF SOCIAL SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND OF THE DISTRICT COURT TO PROTECT JUVENILES FROM VIOLENCE-PRONE CAREGIVERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-101(7a) reads as rewritten:

"7a) ~~"Criminal history" means a~~ Criminal history. -- A local, State, or federal criminal ~~history of~~ conviction or pending charge or indictment of a crime, whether a misdemeanor or a felony, involving violence against a ~~person.~~ person, including the North Carolina crimes involving violence against a person contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 17, Robbery; Article 39, Protection of Minors; or similar crimes under federal law or under the laws of this or other states."

Section 2. G.S. 7B-302(d1) is repealed.

Section 3. G.S. 7B-304 reads as rewritten:

"**§ 7B-304. Evaluation for ~~court.~~ court; criminal history check.**

(a) In all cases in which a petition is filed, the director of the department of social services shall prepare a report for the court containing ~~the results of any mental health evaluation under G.S. 7B-503,~~ a home placement ~~plan,~~ plan and a treatment plan deemed by the director to be appropriate to the needs of the juvenile. The report shall be available to the court immediately following the adjudicatory hearing.

(b) In all cases in which a petition alleges physical abuse by a parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care, the director shall conduct a thorough review of the background of that individual, including a criminal history check and a review of any available mental health records. The criminal history check of the alleged abuser shall be conducted as follows:

(1) The Division of Social Services, Department of Health and Human Services, shall provide to the Department of Justice the request for a criminal history check, the fingerprints of the alleged abuser to be checked, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. The fingerprints of the alleged abuser shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file. The State Bureau of Investigation shall then forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(2) At the time of the request for a criminal history check, the Division of Social Services shall ensure that the alleged abuser is notified of all of the following:

a. The criminal history records that will be checked.

b. The procedure for review of the criminal history information and for completing or challenging the accuracy of the criminal history check.

c. That the court may condition the return of the juvenile's custody to that individual or to another person in whose home that individual remains, upon the completion of a criminal history check.

d. That any person who intentionally falsifies any information required to be furnished to conduct the criminal history check is guilty of a Class 2 misdemeanor.

(3) The Division of Social Services shall notify the director of the department involved in the case of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The Division of Social Services shall not release nor disclose

any portion of the criminal history check to the individual checked.

(4) All the information that the Division of Social Services receives from the Department of Justice through the checking of the criminal history is confidential and is for the exclusive use of the Division of Social Services and those persons authorized under this section to receive the information. The Division of Social Services may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(5) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this subsection. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under Article 31 of Chapter 143 of the General Statues.

The criminal record acquired as a result of a criminal history check may be presented to and considered by the court at any hearing to determine the need for continued nonsecure custody and at any time following an adjudication that the juvenile is abused, neglected, or dependent.

(c) Any person who intentionally falsifies any information required to be furnished to conduct the criminal history check under subsection (b) of this section is guilty of a Class 2 misdemeanor."

Section 4. G.S. 7B-503 reads as rewritten:

"§ 7B-503. Criteria for nonsecure custody.

~~(a)~~ When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

(1) The juvenile has been abandoned; or

(2) The juvenile has suffered physical injury or sexual abuse; or

(3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or

(4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and

the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or

(5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order; or

(6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

~~(b) Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the petition prior to returning the child to a home where the alleged abuser or abusers are or have been present. If the court finds that the alleged abuser or abusers have a history of violent behavior against people, the court shall order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The court may order the alleged abuser or abusers to pay the cost of any mental health evaluation required under this section.~~"

Section 5. G.S. 7B-506(c1) is repealed.

Section 6. G.S. 7B-506 is amended by adding a new subsection to read:

"(c2) The court may impose appropriate conditions, reasonably related to the health and safety of the juvenile, before releasing a juvenile from nonsecure custody. When it is alleged that the juvenile has suffered physical abuse at the hands of the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care, the court may condition the juvenile's release from nonsecure custody and the return of the juvenile's custody to that individual or to another person in whose home that individual remains, upon that individual's consent to a criminal history check pursuant to G.S. 7B-304(b), and if that individual is found to have a criminal history as defined by G.S. 7B-101, upon that individual's submission to a mental health evaluation. In determining whether continued custody is warranted, the court shall consider the opinion of the mental health professional who performed the evaluation."

Section 7. G.S. 7B-903(b) reads as rewritten:

"(b) When the court has found that a juvenile has suffered physical abuse and that the ~~individual~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care is responsible for the ~~abuse has a history of violent behavior against people, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b)~~ abuse, before returning the juvenile to the custody of that ~~individual.~~ individual or to another person in whose home that individual remains, the court may condition the juvenile's return upon its receipt of a criminal history check of the abuser pursuant to G.S. 7B-304(b), and if that individual is found to have a criminal history as defined in G.S. 7B-101, upon a mental health evaluation of that individual and consideration of any recommendation by the mental health professional who performed the evaluation. If a mental health evaluation is unavailable or if the mental health professional's recommendations are unfavorable, the court may order

the abuser to undergo psychiatric, psychological, or other treatment or counseling pursuant to G.S. 7B-904(c) directed toward remediating or remedying the behavior or conditions that led to or contributed to the juvenile's adjudication or the court's decision to remove the juvenile from the home, and may condition the juvenile's return upon compliance with that order."

Section 8. G.S. 7B-1003 reads as rewritten:

"**§ 7B-1003. Disposition pending appeal.**

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. ~~When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.~~ For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. In any case, a finding that the juvenile has suffered physical abuse shall be sufficient reason for entry of such an order. The provisions of ~~subsections (b), (c), and (d) of~~ G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

Section 9. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.10. Criminal history checks for violence-prone caregivers.**

In accordance with G.S. 7B-304(b) or G.S. 7B-903(b), the Department of Justice may provide from the State and National Repositories of Criminal Histories to the Division of Social Services, Department of Health and Human Services, the criminal history of a parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care, who has been alleged or found to have inflicted physical abuse upon the juvenile. The Division of Social Services shall provide to the Department of Justice the request for a criminal history check, the fingerprints of the alleged abuser, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the criminal record check and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the alleged abuser shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file. The State Bureau of Investigation shall then forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division of Social Services shall keep all information acquired pursuant to this section confidential, as provided in G.S. 7B-304(b). The Department of Justice may charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 10. This act becomes effective October 1, 2000, and applies to petitions filed on or after that date.

HB 1637:
Violent Caregiver Changes.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Representatives Nesbitt; Easterling, Melton, and Sherrill
Date:	June 29, 2000		
Version:	H1637-PCSSK-004	**Summary by:**	Esther Manheimer Committee Counsel

Bill Summary: This bill provides a process for the Department of Social Services (DSS) to conduct a criminal history check on certain individuals who are alleged to have physically abused a juvenile. The bill specifies conditions under which the court can return the juvenile to the custody of the alleged perpetrator or to a home where the alleged perpetrator resides.

Bill Analysis:

Fingerprint-based Criminal Background Checks Authorized when Abuse of a Juvenile is Alleged.

Last year legislation was passed that required that whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative due to physical abuse, the DSS is required to do a criminal history check on and review of available mental health records of the alleged perpetrator. However, the legislation failed to give the SBI the statutory authorization to release a state and federal criminal background check to the DSS. Thus, DSS's have been unable to implement the statutory requirement to run the checks. This bill would authorize a process under which the DSS could obtain a fingerprint-based criminal history check in cases where physical abuse of the juvenile has been alleged.

The criminal history check.

The individual to be checked must be notified about the procedures surrounding the check and consent to the check. The criminal history file shall be confidential and may only be seen by the DSS and the court. The criminal history file may not be released to the individual checked, but the DSS may disclose the contents of the file to the individual. Under this bill, there is no liability for negligence in carrying out the check on the part of a State or local agency, but any person who intentionally falsifies information to be provided to carry out the check is guilty of a Class 2 misdemeanor.

Hearing to Continue Nonsecure Custody and Dispositional Hearing.

Under current law, a hearing to continue nonsecure custody must take place within seven days of the day that a DSS assumes custody of a juvenile. The dispositional hearing must take place after the adjudication and the adjudication must take place within 60 days from the date the DSS filed a petition for abuse (G.S. 7B-801). Under current law, at a hearing to continue nonsecure custody, a judge may decide not return a juvenile to the custody of a parent when the juvenile has suffered physical or sexual abuse or the juvenile will be exposed to a substantial risk of physical or sexual abuse (G.S. 7B-503). In addition, under current law, at the dispositional hearing, which takes place after it has been adjudicated that abuse has been proven by clear and convincing evidence, the judge has a variety of alternatives for custody of a juvenile available to him or her (G.S.7B-903).

This bill would require that at both the nonsecure hearing and the dispositional hearing, when abuse is alleged, the custody of the juvenile may not be returned to the perpetrator or to a home where the perpetrator resides unless a criminal history check of the perpetrator has been conducted. When the criminal history check reveals a history of violent behavior, the court must order a mental health evaluation of the perpetrator and use the mental health evaluation in determining the proper custody of the child. Regardless of what findings a judge makes at either of these hearings, the judge is prohibited from returning the custody of the juvenile until the background check is completed.

Issues:

Constitutional – Fundamental Right to Parent, Fundamental Right to Privacy, and Due Process.

In cases where abuse is alleged and the child has been taken into the DSS's custody, the alleged perpetrator must voluntarily submit their fingerprints for a criminal history check. If the perpetrator refuses to agree to the criminal history check, the judge must not return the child to custody of the perpetrator or to a home where the perpetrator is residing. These requirements may violate an individual's fundamental right to parent, fundamental right to privacy, and that individual's due process rights. Under this bill, it is potentially possible that a judge could feel that a child should be returned home but cannot order it so because (1) the judge is bound by the requirement that the perpetrator submit their fingerprints or (2) the DSS does not have the criminal record check from the SBI in time for the hearing. It is probably an invasion of an individual's right to privacy to require them to submit their fingerprints under these circumstances. An individual's fundamental right to parent can be infringed by the state when a parent cannot adequately care for their child. However, potentially under this bill, the state is requiring the fingerprint-based criminal history check as a condition of the child being returned to the parent's custody (it may not be a parent in all cases) without finding that abuse has taken place. In other words, the judge may find that the parent can adequately care for the child and that abuse has not taken place but the court is prohibited under this bill from returning the child when the perpetrator has not voluntarily submitted their fingerprints. Finally, an individual's due process rights may be violated under this bill because even if an individual agrees to submit their fingerprints for a criminal history check, that individual is left without legal recourse in the event that the criminal history check results are not available at the time of the hearing.

Logistical – Timing of Nonsecure hearing and criminal history check and mental health evaluation.

Under current law, a hearing to continue nonsecure custody must take place within seven from the date that DSS takes a child into custody with a possibility of continuing the hearing for no more than ten additional days. There is no provision for a continuance beyond the 17th day. This bill would require that when abuse is alleged, a fingerprint-based local, state, and federal criminal history check be completed and in some cases a mental health evaluation performed on the alleged perpetrator in time for the nonsecure hearing. It may not be possible to complete the criminal history check and mental health evaluation in time for the nonsecure hearing; thus, this bill offers no legal recourse to the court or the individual under these circumstances.

Effective Date:

This act is becomes effective January 1, 2001, and applies to petitions filed on or after that date.

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

6/29/2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas V. Bennett	NCCFTF
Tom Vitaglione	NC CHILD ADVOCACY INST.
JoAnn Lamm	DHHS/DSS
Shaquena Ransome	DSS
Martha Lawrence	YAFD
AL DEITCH	DOA/YAFD
John Rust	NCFPC