1999

SENATE JUDICIARY I COMMITTEE

MINUTES

SENATE JUDICIARY I COMMITTEE

1999

SENATOR ROY A. COOPER, III, CHAIRMAN
SUSAN M. MOORE, COMMITTEE ASSISTANT

SENATE JUDICIARY I COMMITTEE
1999

MEMBER	ROOM #	PHONE #
Chairman:		
Sen. Roy A. Cooper, III	2010	733-5664
Vice Chairmen:		
Sen. R. C. Soles, Jr.	2022	733-5963
Sen. Dan Clodfelter	622	715-3038
Sen. Fletcher Hartsell	518	733-7223
Ranking Minority Member:		
Sen. Robert Carpenter	517	733-5875
Members:		
Sen. Charlie Albertson	525	733-5705
Sen. Austin Allran	516	733-5876
Sen. Patrick Ballantine	1127	715-2525
Sen. John Carrington	515	733-5653
Sen. Charles Carter	2111	733-5742
Sen. Wib Gulley	408	715-3036
Sen. David Hoyle	300-A	733-5734
Sen. Jeanne Lucas	620	733-4599
Sen. Steve Metcalf	520	733-5748
Sen. Tony Rand	300-C	733-9892
Sen. Allen Wellons	1026	733-5850
Staff:		
Walker Reagan, Committee Counsel	Research Division	733-2578
Jo McCants, Committee Co-Counsel	Research Division	733-2578
Susan Moore, Admin. Assistant to Sen. Cooper	2010	733-5664

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SB 25	Guardian Ad Litem/Attorneys	3/02/99
SB 34	Emergency Shelter/Health Facility Rules	3/25/99
SB 34	Emergency Shelter/Health Facility Rules	4/20/99
SB 57	Lose Control Lose Your License	2/11/99
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SB 57	Lose Control Lose Your License	2/18/99
SB 120	Up Some Underage Sales Penalties	4/22/99
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SB 129	Repeal UCC Article on Bulk Transfers	3/16/99
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SB 165	DNA Sample on Arrest	3/11/99
SB 170	Restructure Civil Contempt	3/16/99
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SB 172	Possession of Blue Lights Illegal	4/13/99
SB 173	National Historic Landmark District Permits	3/04/99
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SB 244	Unclaimed Property Act/AB	5/25/99
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SB 246	Appeal or Transfer from Clerk	4/13/99
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SB 272	Huntersville Photo Enforcement	3/23/99
SB 292	Superior Court Criminal Case Docketing Plan	4/26/99
SB 297	Various Limited Partnership Law Changes	4/20/99
SB 331	Amend Sex Offender Registry Laws	4/22/99
SB 370	OSHA Witness Statements	4/20/99
SB 426	Dissenters' Rights Amendments	4/15/99
SB 483	Amend Foreign Corporation Law	4/15/99
SB 527	Emergency Traffic Ordinances	4/22/99
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SB 773	Clarify Annexation Remand	4/22/99
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SB 885	State Auditor Records Access	4/22/99
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SB 1005	Year 2000 Liability Limitations	4/27/99 (3:15 p.m.)
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SB 1021	Computerized Evidence Amendments	4/28/99
SB 1025	Reorganize Superior Court Divisions/ Pilot Funds	6/22/99
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SB 1055	Certain Court Report Services	4/27/99 (3:15 p.m.)
SB 1058	General Contractors Licensure	4/27/99 (3:15 p.m.)
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HB 202	Amend Professional Corp. Act/AB	6/29/99
HB 226	Foreclosure Notice/AB	5/13/99
HB 247	Funeral Processions	7/08/99
HB 248	Precinct Boundaries	6/01/99
HB 280	Motor Vehicle Technical Amendments/AB	6/08/99
HB 280	Motor Vehicle Technical Amendments/AB	6/15/99
HB 293	Proprietary School/Civil Penalties/AB	7/08/99
HB 517	Stop Threats/Acts of School Violence	5/20/99
HB 818	Rule 609 Impeachment Evidence	5/11/99
HB 870	Magistrate Accept Waiver/Vehicle Violation	5/11/99
HB 921	Campaign Finance Changes	4/27/99 (10:00 a.m.)
HB 924	Community Mediation Centers	6/15/99
HB 1048	Amend Rule 4/Manner of Service	6/01/99
HB 1072	Election Law Cleanup	7/06/99
HB 1088	Improve Torrens Law	5/04/99
HB 1173	Personal Information Disclosures	7/13/99

HB 1216	Juvenile Justice Technical Corrections	7/06/99
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HB 1279	Financial Identity Fraud	6/29/99
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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
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H 226=	CULPEPPER	FORECLOSURE NOTICE	*R -CH. SL 99-0137	05-12-99	05-19-99
H 247	WAINWRIGHT	FUNERAL PROCESSIONS	*H -PRES. TO GOV. 07-20	04-22-99	07-12-99
H 248	ALEXANDER	PRECINCT BOUNDARIES/MUNIC. REDISTRIC	*R -CH. SL 99-0227	04-05-99	06-02-99
H 254	EDWARDS	HEALTH CARE FACILITY/PATIENT ABUSE	*S -REF TO COM ON JUDICI	04-29-99	
H 280	COLE	MOTOR VEHICLE TECH. AMENDMENTS	*H -PRES. TO GOV. 07-21	04-27-99	06-15-99
H 293	BRIDGEMAN	PROPRIETARY SCH./CIVIL PENALTIES	*H -CONF COM APPOINTED	07-06-99	07-08-99
H 517=	MOORE R	STOP THREATS/ACTS OF SCHOOL VIOLENCE	*R -CH. SL 99-0257	05-12-99	05-24-99
H 644=	GULLEY J	QUICK TAKE NOTICE OF APPEAL	*H -PRES. TO GOV. 07-21	04-27-99	05-05-99
H 813	HENSLEY	PROHIBIT CYBERSTALKING	*S -REF TO COM ON JUDICI	04-26-99	
H 818	HENSLEY	RULE 609 IMPEACHMENT EVIDENCE	R -CH. SL 99-0079	04-22-99	05-11-99
H 870	OWENS	MAGIST. ACCEPT WAIVER/VEHICLE VIOL.	R -CH. SL 99-0080	04-28-99	05-11-99
H 908	GILLESPIE	ROBBERY WITH CHEMICAL AGENT	S -REF TO COM ON JUDICI	04-21-99	
H 921=	BADDOUR	CAMPAIGN FINANCE CHANGES	*R -CH. SL 99-0031	04-22-99	04-27-99
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H 980=	BADDOUR	WORKERS' COMP./THIRD PARTY ACTIONS	*R -CH. SL 99-0194	04-26-99	05-05-99
H 991	BADDOUR	WORKERS' COMP AND UIM INSURANCE	*R -CH. SL 99-0195	04-28-99	05-05-99
H1026	JUSTUS	LIABILITY TO SALES REPRESENTATIVES	S -REF TO COM ON JUDICI	04-27-99	
H1048	MILLER G	AMEND RULE 4/MANNER OF SERVICE	*S -REF TO COM ON JUDICI	04-29-99	
H1072	ALEXANDER	ELECTION LAW CLEANUP	*H -PRES. TO GOV. 07-13	04-26-99	07-06-99
H1088	BAREFOOT	IMPROVE TORRENS LAW	R -CH. SL 99-0059	04-28-99	05-04-99
H1126	HACKNEY	PHYS. CONTRACTS/NONCOMPETE PROHIBITE	*S -REF TO COM ON JUDICI	04-29-99	
H1169	THOMPSON	SUCCESSION TECHNICAL AMENDMENTS	*S -REF TO COM ON JUDICI	05-03-99	
H1173	MCCRARY	PERSONAL INFORMATION DISCLOSURES	*H -PRES. TO GOV. 07-20	05-03-99	07-13-99
H1184=	WRIGHT	HOSPITAL GOVERNING AUTHORITY	*S -RE-REF COM ON FINANCE	04-28-99	07-01-99
H1200=	MILLER G	JOURNALISTS' TESTIMONIAL PRIVILEGE	*S -REF TO COM ON JUDICI	04-28-99	

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H1216	BADDOUR	JUVENILE JUSTICE TECHNICAL CORRECTIO	*H -PRES. TO GOV. 07-13	04-26-99	07-07-99
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H1286	GOODWIN	MASS GATHERINGS	*R -CH. SL 99-0171	05-11-99	05-19-99
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S 25=	WELLONS	GUARDIAN AD LITEM/ATTYS	S -PRES. TO GOV. 07-20	02-03-99	03-02-99
S 34=	COCHRANE	EMER SHELTER/HEALTH FACIL.RULES WAIV	*R -CH. SL 99-0307	02-04-99	04-22-99
S 49	RAND	D.A. WORK PRODUCT PROTECTION	S -REF TO COM ON JUDICI	02-08-99	
S 57=	COOPER	LOSE CONTROL LOSE YOUR LICENSE	R -CH. SL 99-0243	02-09-99	02-24-99
S 79	RAND	GUBERNATORIAL TEAM TICKET	S -REF TO COM ON JUDICI	02-15-99	
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S 128=	HARTSELL	INTEREST ON MONEY JUDGMENTS	*S -PRES. TO GOV. 07-14	02-18-99	02-24-99
S 129	HARTSELL	REPEAL UCC ARTICLE ON BULK TRANSFERS	S -RE-REF COM ON FINANCE	02-18-99	04-28-99
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S 172	RAND	CLARIFY BLUE LIGHTS ILLEGAL	*R -CH. SL 99-0249	02-25-99	04-19-99
S 173	RAND	SPORTS CLUB ABC PERMITS	*H -RE-REF COM ON ALCOHOL	02-25-99	03-04-99
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S 177=	HARTSELL	SECURITIES TRANSFER ON DEATH	S -REF TO COM ON JUDICI	03-01-99	
S 178=	HARTSELL	UNIFORM PRUDENT INVESTOR ACT	*R -CH. SL 99-0215	03-01-99	03-24-99
S 193=	HARTSELL	AMEND PROFESSIONAL CORP ACT	S -REF TO COM ON JUDICI	03-01-99	
S 197=	COOPER	SAFE FAMILIES ACT	*R -CH. SL 99-0023	03-01-99	03-09-99
S 210=	HARTSELL	FORECLOSURE NOTICE	S -REF TO COM ON JUDICI	03-02-99	
S 236=	LUCAS	ADOPTION RECORDS AND REGISTRY	S -RE-REF COM ON CH&HUMRS	03-04-99	03-08-99

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S 246=	HARTSELL	APPEAL OR TRANSFER FROM CLERK	*R -CH. SL 99-0216	03-04-99	04-19-99
S 255	ALBERTSON	STATE AGENCY TELEPHONE MENUS	S -PRES. TO GOV. 07-14	03-08-99	03-29-99
S 272	ODOM	LOCAL PHOTO ENFORCEMENT	H -RE-REF COM ON FINANCE	03-08-99	03-24-99
S 288	REEVES	UNSOLICITED COMM. ELEC. BULK MAIL	*R -CH. SL 99-0212	03-08-99	04-12-99
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S 336	ALLRAN	OMNIBUS ELECTION REFORM	S -REF TO COM ON JUDICI	03-11-99	
S 337	ALLRAN	DISCLOSURE OF PUSH POLLS	S -REF TO COM ON JUDICI	03-11-99	
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S 342=	RAND	ENHANCE CHILD SUPPORT ENFORCEMENT	S -RE-REF COM ON JUDICI	03-25-99	
S 370	BALLANCE	OSHA WITNESS STATEMENTS	*S -PRES. TO GOV. 07-19	03-15-99	04-22-99
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S 425=	CLODFELTER	ARREST WARRANTS/COPIES	S -REF TO COM ON JUDICI	03-18-99	
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S 452=	MARTIN W	STATE HOSPITALS/PEER REVIEW	S -REF TO COM ON JUDICI	03-22-99	
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S 501	JORDAN	WILMINGTON RED LIGHT CAMERAS	S -REF TO COM ON JUDICI	03-25-99	
S 527	HARTSELL	EMERGENCY TRAFFIC ORDINANCES	*R -CH. SL 99-0310	03-25-99	04-22-99
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S 579	JORDAN	CLERKS OF COURT AUTHORITY	S -REF TO COM ON JUDICI	03-29-99	
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S 654	GULLEY W	MANUFACTURED HOME LAW RESTORATION	*R -CH. SL 99-0278	03-31-99	04-19-99

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S 707	HOYLE	UPDATE CORPORATE CONVEYANCING	S -REF TO COM ON JUDICI	04-01-99	
S 711	ODOM	CORNELIUS PHOTO ENFORCEMENT	S -REF TO COM ON JUDICI	04-01-99	
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S 760=	GULLEY W	CAMPAIGN FINANCE CHANGES	S -REF TO COM ON JUDICI	04-05-99	
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S 769	FOXX	AMEND LARCENY OF GENSING	R -CH. SL 99-0107	04-06-99	04-21-99
S 770=	RAND	COMMUNITY MEDIATION CENTERS	S -REF TO COM ON JUDICI	04-06-99	
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S 774	CLODFELTER	ELECTRONIC PROXIES FOR NONPROFITS	*R -CH. SL 99-0139	04-07-99	04-19-99
S 775	CLODFELTER	ALLOW ELECTRONIC/TELEPHONIC PROXIES	*R -CH. SL 99-0138	04-07-99	04-19-99
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S 837	ALLRAN	TORRENS REGISTRATION SYSTEM	S -REF TO COM ON JUDICI	04-13-99	
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S 842	WELLONS	APA PETITIONS/SPECIAL NEEDS	S -REF TO COM ON JUDICI	04-13-99	
S 852	JORDAN	DRUG TREATMENT COURT AMENDMENTS	*R -CH. SL 99-0298	04-13-99	04-27-99
S 873	DALTON	IMPROVE REGISTERED DOCUMENTS	*S -RE-REF COM ON RULES &	04-13-99	07-07-99
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S 882	GULLEY W	CLEAN ELECTION ACT	S -RE-REF COM ON JUDICI	06-15-99	
S 885	COOPER	STATE AUDITOR RECORDS ACCESS	R -CH. SL 99-0188	04-13-99	04-22-99
S 888	COOPER	DRUG LAW AMENDMENTS	*S -PRES. TO GOV. 07-19	04-13-99	04-22-99
S 897=	DALTON	SAFETY PROFESSIONALS	*H -REF TO COM ON RULES	04-14-99	06-29-99
S 901	WELLONS	APPOINTMENT OF JUVENILE COUNSEL	S -RE-REF COM ON APPROPR	04-14-99	04-26-99
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S 907	COOPER	LIMIT CHILD'S ACCESS/COMPUTER PORN	S -RE-REF COM ON INFOTECH	04-14-99	04-15-99

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1999-2000 Biennium SENATE: JUDICIARY I Valid Through 4-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 908	ALBERTSON	REVISE UCC WAREHOUSE RECEIPTS	*H -RE-REF COM ON JUDICII	04-14-99	04-28-99
S 909=	ALBERTSON	COTTON GINS, WAREHOUSES, MERCHANTS	S -REF TO COM ON JUDICI	04-14-99	
S 915=	RAND	TOBACCO RESERVE FUND/NONPART.MFG.	*R -CH. SL 99-0311	04-14-99	04-22-99
S 917	CARPENTER R	DWI SCREENING TEST ADMISSIBILITY	S -REF TO COM ON JUDICI	04-14-99	
S 918	COOPER	JUVENILE JUSTICE TECH. CORRECTIONS	S -REF TO COM ON JUDICI	04-14-99	
S 919	GARROU	CHILD ABUSE CHANGES	S -REF TO COM ON JUDICI	04-14-99	
S 926	KINNAIRD	DOT CONDEMNATION PROCEDURES	S -REF TO COM ON JUDICI	04-14-99	
S 936=	FORRESTER	PERMANENT REVOCATION HEARING	S -REF TO COM ON JUDICI	04-14-99	
S 963=	GULLEY W	LOCAL GOVT ABC PERMIT INVOLVEMENT	S -REF TO COM ON JUDICI	04-15-99	
S 969	GULLEY W	N.C. HEALTH AND WELLNESS TRUST FUND	*H -REF TO COM ON SLCTTB	04-15-99	06-23-99
S 973=	WEINSTEIN	REGULATE USED MOTOR VEHICLE PARTS	S -REF TO COM ON JUDICI	04-15-99	
S1005	HOYLE	YEAR 2000 LIABILITY LIMITATIONS	*R -CH. SL 99-0295	04-15-99	04-28-99
S1009=	HOYLE	JOURNALISTS' TESTIMONIAL PRIVILEGE	*R -CH. SL 99-0267	04-15-99	04-26-99
S1011=	COOPER	BULLET PROOF VEST/COMMIT FELONY	*R -CH. SL 99-0263	04-15-99	04-27-99
S1012	COOPER	MEDICAL MALPRACTICE PLEADINGS	*HF-FAILED 2ND READING	04-15-99	04-28-99
S1021	CLODFELTER	COMPUTERIZED EVIDENCE AMENDMENTS	R -CH. SL 99-0131	04-15-99	04-28-99
S1023=	CLODFELTER	EXPAND MAGISTRATES' AUTHORITY	S -REF TO COM ON JUDICI	04-15-99	
S1024=	**CLODFELTER**	**STATE JUDICIAL COUNCIL/FUNDS**	**S -REF TO COM ON JUDICI**	**04-15-99**	
S1025=	**CLODFELTER**	**REORG. SUP. CT. DIVISIONS/PILOT FUND**	***S -PRES. TO GOV. 07-21**	**04-15-99**	**06-23-99**
S1026=	**CLODFELTER**	**SUPREME COURT RULES MAKING/FUNDS**	***H -REF TO COM ON JUDICIV**	**04-15-99**	**06-22-99**
S1033=	CARPENTER R	RAISE STATE TORT CLAIMS CAP	S -REF TO COM ON JUDICI	04-15-99	
S1040=	RAND	HOSPITAL GOVERNING AUTHORITY	S -REF TO COM ON JUDICI	04-15-99	
S1041	RAND	DV ORDER VIOLATIONS	S -REF TO COM ON JUDICI	04-15-99	
S1045	RAND	INTERFERE WITH EMERGENCY CALLS	S -REF TO COM ON JUDICI	04-15-99	
S1055	WELLONS	CERTAIN COURT REPORT SERVICES	*R -CH. SL 99-0264	04-15-99	04-28-99
S1058	CLODFELTER	GENERAL CONTRACTORS LICENSURE	*S -PRES. TO GOV. 07-15	04-15-99	04-27-99
S1063	METCALF	CAMPAIGN STANDARDS	S -REF TO COM ON JUDICI	04-15-99	
S1065	RAND	AMEND IMPEACHMENT EVIDENCE RULE	S -REF TO COM ON JUDICI	04-15-99	
S1068	RAND	MCGRUFF CRIM.BACKGD. CHECKS	*R -CH. SL 99-0214	04-15-99	04-26-99
S1069	RAND	CRIMINAL IMPERSONATION-2	S -REF TO COM ON JUDICI	04-15-99	

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 SENATE: JUDICIARY I Valid Through 4-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1072	RAND	IDENTITY THEFT	S -REF TO COM ON JUDICI	04-15-99	
S1073=	RAND	PROS. DISCRETION/CAPITAL SENTENCING	S -REF TO COM ON JUDICI	04-15-99	
S1119	LUCAS	PERFUSIONIST LICENSURE	S -RE-REF COM ON HLTHCARE	04-15-99	05-11-99
S1125=	EAST	MOTORCYCLE SAFETY ACT	S -REF TO COM ON JUDICI	04-15-99	
S1145	RAND	HARASSING COMMUNICATIONS	S -REF TO COM ON JUDICI	04-15-99	
S1146	RAND	AMEND SECRET PEEPING	S -REF TO COM ON JUDICI	04-15-99	
S1147	RAND	AMEND STALKING LAW	S -REF TO COM ON JUDICI	04-15-99	
S1149=	COOPER	PROHIBIT PREDATORY LENDING	*R -CH. SL 99-0332	04-15-99	06-16-99
S1154	RAND	AMEND ASSAULT INFL. SERIOUS INJURY	S -REF TO COM ON JUDICI	04-15-99	

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.

MINUTES
SENATE JUDICIARY I COMMITTEE
FEBRUARY 11, 1999

The Senate Judiciary Committee I met on February 11, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper, Chairman, called the meeting to order and welcomed members and guests to the first meeting of the 1999 session. Senator Hartsell was recognized to temporarily chair the meeting.

Senator Cooper was recognized to explain **Senate Bill 57 – AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE WHEN CERTAIN PROVISIONAL LICENSEES COMMIT DESIGNATED ACTS.**

Senator Lucas moved to adopt a Proposed Committee Substitute for Senate Bill 57 for discussion. The motion carried by a majority voice vote.

Walker Reagan, Committee Counsel, was recognized to answer questions from the Committee.

Wayne Hurder, Director of the Driver License Section of the Department of Motor Vehicles, was recognized to speak on the bill.

A vote was not taken on the bill at this meeting, but will be heard at the next scheduled meeting of the Committee.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, February 11, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 57	Lose Control, Lose Your License	Cooper

Senator Cooper, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 57

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

Sponsors: Senators Cooper; Albertson, Ballantine, Carpenter, Carter, Dalton, East, Forrester, Foxx, Garrou, Garwood, Harris, Hoyle, Lee, Lucas, Metcalf, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Rucho, Shaw of Guilford, Soles, Weinstein, and Wellons.

Referred to: Judiciary I.

February 9, 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(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 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:

"(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) 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:

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 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

S D

S57-PCSSE-001.1
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 57
THIS IS A DRAFT 10-FEB-99 18:37:26
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 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 drivers

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 11, 1999

MEMORANDUM

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

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 57 – LOSE CONTROL LOSE YOUR LICENSE** – Senator Cooper

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 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.

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:

- 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.

VISITOR REGISTRATION SHEET

I 2-11-99

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Suzanne Williams	NCCS
Mary Dix	Office of Juvenile Justice
REGINALD RONALD HOLLEY	ADMINISTRATION DEPT - YAID
Joyce H. Elliott	NCAE
Bill Wilson	NCAE
Deborah Ross	ACLU
Bruce Winn	NCBA - Juv Justice Comm
Christina Mollica	Covenant w/ NCs Children
Debra Horton	NC State PTA
Susan Markham	EdHS
Allison Schafer	NCSBA
Deanne Winn	NCSBA
Mike Okun	NC State AFLCIO
Rose Smith	NCCCC
Randy Whitfield	NCCCS
Gene Causby	NCDTSEA
John Palumbo	AT&T
Nancy Thompson	NCCBS
Jane Markham	SBE
Lee Atkinson	SBE
Peggy Johnson	Center for the Prevention of School Violence.

VISITOR REGISTRATION SHEET

[redacted]-7 02-11-99

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
David C. Porter	Cary Police Dept.
Keith RAYM	Cary Police Department - SRO
Mark Benson	Mc Capital Group
Mary Carmelia	Mecklenburg County
Mike Mauer	Carteret
Deputy P.S. Judson	Durham Co Sheriff Dept (SRO)
Deputy D.A. Wilson	Durham Co. Sheriff's Dept. (SRO)
Jonathan Williams	CCPS
Roger Scheurer	DPI
Henry Johnson	DPI
Thomas Vance Bennett	NCCFTF
James R. Munn	NC School Resource Officers Assoc'
Robert Weiss	Fiscal Research Division
Wayne Hurder	NC DMV
Ed Tyer	WRAL-TV
Bob Phillips	Lt. Gov. office
Mack Paul	"
Julie White	"

MINUTES
SENATE JUDICIARY I COMMITTEE
FEBRUARY 16, 1999

The Senate Judiciary I Committee met on Tuesday, February 16, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed members and guests.

The Proposed Committee Substitute for **Senate Bill 57 – AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF 18 FOR COMMITTING DESIGNATED ACTS** – adopted at the meeting on February 11th was brought back for continued discussion.

The following people were recognized to speak on the bill:

Jeff Arney – Greensboro Police Officer – School Resource Officer
Capt. Jim Cyfers – Greensboro Police Dept. – Director of School Resource Plan
Doug Robinson – Co-ordinator for Students Against School Violence
Linda Mahem – Guidance Counsellor – Broughton High School, Raleigh
Robin Johnson – Research Division – General Assembly (to answer questions)

Discussion of Senate Bill 57 will continue at the next meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, February 16, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 57	Lose Control, Lose Your License	Cooper

Senator Cooper, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S57-PCSSE-001.1
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 57
THIS IS A DRAFT 10-FEB-99 18:37:26
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 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 an 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 drivers

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 11, 1999

MEMORANDUM

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

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 57 – LOSE CONTROL LOSE YOUR LICENSE** – Senator Cooper

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 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.

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:

- 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.

DURHAM PUBLIC SCHOOLS
RECOMMENDED CONSEQUENCES FOR BEHAVIORAL INFRACTIONS FOR MIDDLE AND HIGH SCHOOL STUDENTS
(Student Code of Conduct)

INFRACTIONS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE
THREATENING, ABUSING, INSULTING, PROFANING, HAZING, OBSCENE GESTURING, AND OTHER ACTS OF DISRUPTING BEHAVIOR	3 TO 5 DAYS OSS	5 TO 10 DAYS OSS	10 DAYS OSS, WITH RECOMMENDATION FOR LONG TERM
INDECENT LITERATURE	3 TO 5 DAYS OSS	5 TO 10 DAYS OSS	10 DAYS OSS, WITH RECOMMENDATION FOR LONG TERM
INAPPROPRIATE DRESS	3 TO 5 DAYS OSS	5 TO 10 DAYS OSS	10 DAYS OSS, WITH RECOMMENDATION FOR LONG TERM
TRUANCY/SKIPPED SCHOOL/LEAVING SCHOOL	PARENT CONFERENCE 1 TO 5	5 DAYS OF ISS	5 TO 10 DAYS ISS
TRUANCY/SKIPPED CLASS/LEAVING SCHOOL CAMPUS	PARENT CONFERENCE, 1 TO 5 DAYS OF ISS	5 TO 5 DAYS OF ISS	5 TO 10 DAYS ISS
*USE OR POSSESSION OF ALCOHOL, DRUGS, OR DRUG PARAPHERNALIA	MANDATORY 5 DAYS ISS/OSS RECOMMEND TREATMENT	MANDATORY 10 DAYS OSS, RECOMMEND TREATMENT WITH RECOMMENDATION OF LONG TERM	
*SALE, DELIVERY, DISTRIBUTION OF DRUGS OR ALCOHOL	MANDATORY 10 DAYS OSS, ARREST WITH RECOMMENDATION FOR LONG TERM	MANDATORY 10 DAYS OSS, ARREST WITH RECOMMENDATION FOR LONG TERM	
*VANDALISM/PROPERTY DAMAGE	RESTITUTION, 3 TO 5 DAYS OSS	RESTITUTION, 5 TO 10 DAYS OSS	RESTITUTION, 10 DAYS OSS
TRESPASSING	WRITTEN WARNING AND NOTIFICATION TO PARENT(S)	ARREST	ARREST
FALSE ALARM/BOMB THREAT	5 DAYS OSS, ARREST	10 DAYS OSS, ARREST	MANDATORY 10 DAYS OSS, ARREST WITH RECOMMENDATION FOR LONG TERM
VERBAL ABUSE TOWARD STAFF	3 TO 5 DAYS OSS	5 TO 10 DAYS OSS	MANDATORY 10 DAYS OSS, WITH RECOMMENDATION FOR LONG TERM

* CONSEQUENCE MANDATED BY SCHOOL BOARD POLICY 4050
** REFER TO BOARD POLICY 4050

PRINCIPALS ARE LEGALLY REQUIRED TO REPORT VIOLATIONS OF ANY LOCAL, STATE, OR FEDERAL LAW TO PROPER LAW ENFORCEMENT AGENCIES. (GS 115C-288)
LONG TERM IS DEFINED AS SUSPENSION FROM SCHOOL FOR THE REMAINDER OF THE SCHOOL TERM OR, IN THE CASE OF A FIREARM OR EXPLOSIVE, 365 DAYS.

07/95

END

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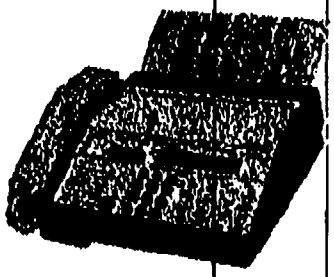
Fax Cover Sheet

Fax Number (919) 560-2312



TO:

DATE: 2/16/99

ATTENTION: Julie White

FAX # CALLED: 733-6595

SENT BY: Jean Hasson

DEPARTMENT: Health

FROM:

HILLSIDE HIGH SCHOOL
3727 FAYETTEVILLE STREET
DURHAM, NORTH CAROLINA 27707
(919) 560-3925

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE) 3

COMMENTS:

ISS - In School Suspension

OSS - Out of School Suspension

DURHAM PUBLIC SCHOOLS
RECOMMENDED CONSEQUENCES FOR BEHAVIORAL INFRACTIONS
FOR MIDDLE AND HIGH SCHOOL STUDENTS
(Student Code of Conduct)

INFRACTIONS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE
*ARSON	3 TO 10 DAYS OSS, ARREST WITH POSSIBLE RECOMMENDATION FOR LONG TERM	5 TO 10 DAYS OSS, ARREST WITH POSSIBLE RECOMMENDATION FOR LONG TERM	10 DAYS OSS, ARREST WITH POSSIBLE RECOMMENDATION FOR LONG TERM
ASSAULT ON STAFF	MANDATORY 10 DAYS OSS, ARREST WITH POSSIBLE RECOMMENDATION FOR LONG TERM	MANDATORY 10 DAYS OSS, ARREST WITH RECOMMENDATION FOR LONG TERM	
*ASSAULT ON STUDENT	MANDATORY 5 TO 10 DAYS OSS WITH POSSIBLE ARREST	MANDATORY 10 DAYS OSS WITH POSSIBLE ARREST AND RECOMMENDATION FOR LONG TERM	
CLASSROOM MISBEHAVIOR/DISRUPTIVE	3 DAYS ISS	5 TO 10 DAYS ISS	5 TO 10 DAYS OSS
CHEATING/PLAGIARISM/ FALSIFICATION	ZERO GRADE, PARENT	ZERO GRADE, PARENT/ STUDENT CONFERENCE	ZERO GRADE, 3 DAYS OF ISS
DEFIANCE OF AUTHORITY/ DISRESPECTFUL/ NON-COMPLIANCE	1 TO 5 DAYS ISS	5 TO 10 DAYS ISS	3 TO 10 DAYS OSS
**EXPLOSIVES (USE OR POSSESSION)	MANDATORY 10 DAYS OSS, ARREST WITH POSSIBLE RECOMMENDATION FOR LONG TERM - (365 days)	MANDATORY 10 DAYS OSS, ARREST WITH RECOMMENDATION FOR LONG TERM - (365 days)	
EXTORTION	RESTITUTION, 3 DAYS ISS	RESTITUTION, 3 DAYS OSS	RESTITUTION, 3-10 DAYS OSS, WITH POSSIBLE RECOMMENDATION FOR LONG TERM
FIGHTING	3 TO 10 DAYS OSS	5 TO 10 DAYS OSS	10 DAYS OSS WITH RECOMMENDATION FOR LONG TERM
GAMBLING	3 TO 10 DAYS ISS	3 TO 5 DAYS OSS	5 TO 10 DAYS OSS
POSSESSION OF STOLEN PROPERTY	RESTITUTION, 3 DAYS ISS	RESTITUTION 5 DAYS ISS	RESTITUTION, 3 TO 5 DAYS
*POSSESSION OR USE OF OTHER WEAPON(S)	10 DAYS OSS, ARREST WITH POSSIBLE RECOMMENDATION FOR LONG TERM	10 DAYS OSS, ARREST WITH RECOMMENDATION FOR LONG TERM	
**POSSESSION OR USE OF GUN (FIREARM)	MANDATORY 10 DAYS OSS, ARREST WITH POSSIBLE RECOMMENDATION FOR LONG TERM - (365 days)	MANDATORY 10 DAYS OSS, ARREST WITH RECOMMENDATION FOR LONG TERM - (365 days)	
PEER RELATIONS/SEXUAL HARASSMENT	WARNING AND PARENT NOTIFICATION/CONFERENCE	3 DAYS ISS WITH PARENT/STUDENT CONFERENCE	3 TO 10 DAYS OSS WITH PARENT/STUDENT CONFERENCE
SCHOOL BUS/MISCONDUCT	WARNING AND PARENT CONFERENCE	3 TO 5 OFF BUS	5 TO 10 OFF BUS
*SMOKING/POSSESSION OF TOBACCO	WARNING AND PARENT NOTIFICATION	3 TO 5 DAYS ISS	5 TO 10 DAYS ISS WITH POSSIBLE OSS
* THEFT	RESTITUTION, 3 TO 5 DAYS	RESTITUTION, ARREST, 5 TO	RESTITUTION, ARREST, 10

7/95

-over-

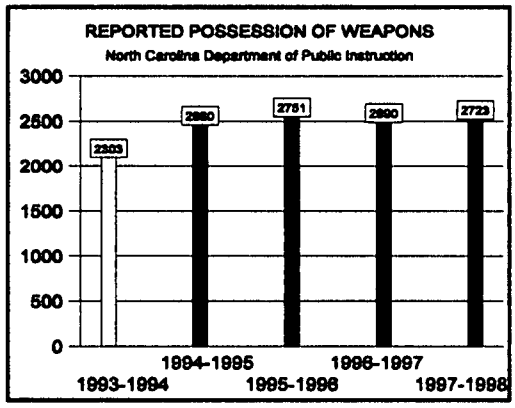
Attachment #3

Center for the Prevention of School Violence
20 Enterprise Street, Suite 2 • Raleigh, North Carolina 27607-7375
(919) 515-9397 • 1-800-299-6054 • Fax (919) 515-9561
http: www.ncsu.edu/cpsv/

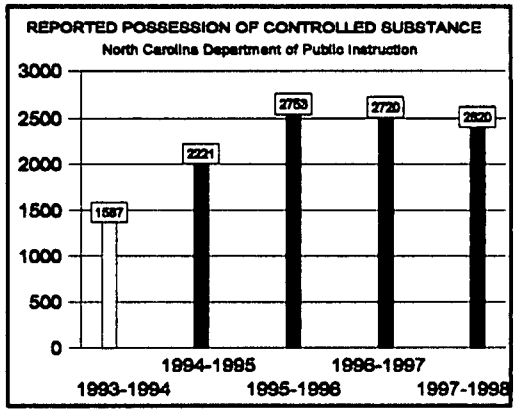
Dr. Pamela L. Riley, Director

THE MOST FREQUENTLY REPORTED INCIDENTS/ACTS OF SCHOOL VIOLENCE IN IN NORTH CAROLINA SCHOOLS: 1997-1998

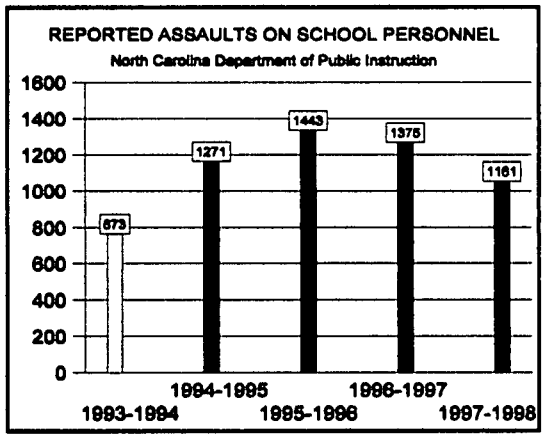
Schools in North Carolina reported 7543 incidents/acts of school violence to the North Carolina Department of Public Instruction (NCDPI) for school year 1997-1998. The number of reported incidents/acts reflects a decrease of over seven percent from the previous reporting year and continues a decline which began in 1996-1997. A close examination of the most recent NCDPI report reveals that eighty-six percent of the incidents/acts were reported to have occurred in three categories: possession of a weapon (other than a firearm); possession of a controlled substance; assault on school personnel.



The most frequently reported category, possession of a weapon (other than a firearm), experienced a one percent increase in reported incidents/acts. This category had been the second most frequently reported category in the two previous reporting years. In 1997-1998, the second most frequently reported category, possession of a controlled substance, experienced a decrease of almost four percent. This category had been the most frequently reported category in 1995-1996 and 1996-1997. Assault on school personnel continued as the third most frequently reported category in 1997-1998. For 1997-1998, the category reflects a sixteen percent decline.



The fact that these three categories have been the top three categories of reported incidents/acts of school violence since reporting began in 1993-1994 and that they have accounted for the vast majority (over eighty percent in each reporting year) of reported incidents/acts is telling for what it reveals about the problems North Carolina schools must address. Despite a decrease in the aggregate number of reported incidents as well as decreases in two of the top three reporting categories, weapons, drugs, and assaultive behavior continue to interfere with the educational missions of the state's schools. The many efforts school districts and schools have articulated in safe school plans must be vigorously pursued so that educational environments which are free of fear and conducive to learning are provided to all students, teachers, and school staff in North Carolina.



SCHOOL VIOLENCE.
LET'S GET IT OUT OF O[redacted]STEM.

NC STATE UNIVERSITY

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee

5/22/96
Date

May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ann Bellamy	SBE
Randy Whitfield	NCCCS
Kim Nicker	Fayetteville Observertimes
Jane Pinsky	AAA Carolinas
John M May	NC Chd Council
David R. Anders	PFFPNC
Carter	Bone & Associates
John McMillan	NFOS
Lee Rainey	Justice Policy Center
Bain	NCMS
Scott Hannah	NCATL
Thad DAISE	NCAE
Kay Michaels	PPOD
BILL SCOGGIN	NCBA
Reg Dorer	Conference of D.A.s
Anne Kamay	NCDPE

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee

2/16/99
Date
May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Larry Dix	Office of Juvenile Justice
CAPT JIM SCIFRES	President, NC Assn. of School Resource Officers
Doug Robinson	Center for the Prevention of School Violence
Officer Jeff Aracy	Greensboro P.D. (SRO @ Smith H.S.)
Melissa Lovell	DOJ
Suzanne Williams	NCCCS
Nancy Thompson	NCCBD
Bill Wilson	NCAE
Anne Wise	NCBA
Deborah Ross	ACLU
Johnny Harris	Public School Forum
Leanne Winner	NCSBA
Ruth Sappie	NCDOT
Wayne Hurder	NCDOT-DMV
[illegible]	[illegible]
Hal Miller	NCACCT

VISITOR REGISTRATION SHEET

Judiciary I — 2/16/99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Rob Lamm	Pro Tem
Charles Wilkins	NC Assoc. Chiefs of Police
Alan Miles	Bailey & Dixon LLP
Mike Tyson	Maryland
[illegible]	NCCBI
Paul Gotherman	Inform Inc.
Roz Gaven	NCDOC
Andy Ellen	NCRMA
Fran Preston	NCRMA

MINUTES
SENATE JUDICIARY I COMMITTEE
FEBRUARY 18, 1999

The Senate Judiciary I Committee met on February 18, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and asked that Senator Soles chair the meeting for the continued discussion of **Senate Bill 57 – AN ACT PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF 18 FOR COMMITTING DESIGNATED ACTS.**

Senator Cooper moved to adopt a Proposed Committee Substitute (#002.1) for discussion. The motion carried by a majority voice vote.

Walker Reagan, Committee Counsel, was recognized to explain the changes in the new Proposed Committee Substitute.

Senator Allran moved to amend the Proposed Committee Substitute on Page 3, Lines 36-43 (#1, copy attached). After discussion, the amendment was withdrawn.

Robin Johnson – Counsel for the Education Committee, was recognized to answer questions from the Committee.

Senator Allran moved to amend the Proposed Committee Substitute on Page 3, Lines 36-43 (changes are noted on Amendment #1). The motion carried by a majority voice vote.

Senator Lucas moved to give the Proposed Committee Substitute for Senate Bill 57 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, February 18, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 57	Lose Control, Lose Your License	Cooper

Senator Cooper, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S57-PCSRH-002.1
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 57
THIS IS A DRAFT 17-FEB-99 12:09:54
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 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 and serious injury to a teacher or other school personnel on school property that resulted in disciplinary action under G.S. 115C-391(d2)(1) or that could have resulted in that disciplinary action if the conduct had occurred in a public school.

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 only apply 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.

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February 18, 1999

MEMORANDUM

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

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **REVISED PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 57 – LOSE CONTROL LOSE YOUR LICENSE** – Senator Cooper (S57-PCSRH-002.1)

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 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.

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:

- 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.

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.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 57

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

S57-ASE-005

Page 1 of __

Date 2-18 ,1999

Comm. Sub. [YES]
Amends Title []
S57-PCSRH-002.1

Senator Allran

moves to amend the bill on page 3, lines 36 through 43, by rewriting those lines to read:

"3. The physical assault on a teacher or other school personnel ~~on school property that resulted in disciplinary action under G.S. 115C-391(d2)(1) or G.S. 115C-391(d2)(2)(a) or could have resulted in that disciplinary action if the conduct had occurred in a public school.~~".

SIGNED Allran
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

SENATE JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

REVISED II

Tuesday, February 23, 1999

Sen. Cooper,
submits the following with recommendations as to passage:

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

S.B. **57** Lose Control Lose Your License

Draft Number:	PCS7525
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

S-1 — 2-18-99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Ann Bellamy	SBE
Jim Johnson	Fiscal Research Division
Bill Wilson	NCAE
Deanne Winner	NCSBA
Randy Whitfield	NCCCS
Stephanie Wilson	NCCCS
Deborah Ross	ACLU
Ed Taylor	OJJ
Michael E. Bryant	DL/DMV
Penny Rogers	NCDOT
Patti Moore	AP
Bill Scogin	NC Bar Assoc
Gordon Keath	Project Challenge
Roger Bone	Bone + Assoc - CIADA
Chris Poole	" "
Fred McKellar	Moore + Van Allen
Howard Craft	DMV/DL
Gene Causby	NCDOTSE
Kim Hamel	Gov's Office
Jacquelyn Gray	A + T
Jack Pulley	AT&T
D Simmons	NC Equity

VISITOR REGISTRATION SHEET

F & T — 2-18-99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Nancy Thompson	LACCPA
Jim Bell	Atty
A. Porter	Bode & Assoc.
Lucias Pullen	Attorney
Andy Romanet	N.C.L.M.
[illegible]	Lt. Gov.
Hal Miller	NC ACCT
[illegible]	NCRMA
[illegible]	Poyner & Spruill
[illegible]	DCBA
[illegible]	NUMMI
[illegible]	Flor Office

MINUTES
SENATE JUDICIARY I COMMITTEE
FEBRUARY 23, 1999

The Senate Judiciary I Committee met on February 23, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Wellons to explain **Senate Bill 25 - AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.**

Senator Wellons moved to amend the bill on Page 1, Line 16 (copy attached).

Due to technical problems with the amendment, staff was asked to prepare a Proposed Committee Substitute to bring back to the next meeting.

Senator Harstell was recognized to explain **Senate Bill 128 - AN ACT TO CLARIFY THE LAW CONCERNING INTEREST ON MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.**

Senator Hartsell moved to amend the bill on Page 1, Line 23 (copy attached). The motion carried by a majority voice vote.

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

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, February 23, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

TBA

Senator Cooper, Chair

SENATE JUDICIARY COMMITTEE

AGENDA - FEBRUARY 23, 1999

SB 25	Guardian Ad Litem/Attorneys	Wellons
SB 128	Interest on Money Judgments	Hartsell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 25

Short Title: Guard. Ad Litem/Attys. (Public)

Sponsors: Senators Wellons; Ballance, Dalton, Dannelly, Garrou, Gulley, Hagan, Horton, Kerr, Lucas, Metcalf, Miller, Purcell, Rand, Reeves, Warren, and Weinstein.

Referred to: Judiciary I.

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 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.

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February 23, 1999

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

FROM: **Jo B. McCants, Committee Co-Counsel**

RE: **Senate Bill 25 – Guardian Ad Litem/ Attorneys**

Proposed Bill

Senate Bill 25 is a recommendation of the Guardian Ad Litem Legislative Research Committee. The bill amends current law to require that when the court appoints an attorney to represent a child that is allegedly abused, neglected, or dependent, the attorney's appointment is for the duration of the proceeding.

Current Law

Currently, when an attorney is appointed to represent a child that is allegedly abused, neglected or dependent, the attorney's appointment lasts only "through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the child." Therefore, the attorney may or may not be involved in the review hearings after the disposition of the case. One of the reasons for review hearings is to help develop a permanent placement plan that is in the best interest of the child.

Background Information

The proposed bill restores the current law to what the law was prior to July 1, 1995. During the 1995 legislative session, G.S. 7A-586 (Appointment and duties of guardian ad litem) was amended by substituting the current language that only allows for representation through the disposition phase of a case for the language that is in Senate Bill 25.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE Feb. 23, 1999

S. B. No. 25 Amendment No. _____
(to be filled in by Principal Clerk)

~~Rep.~~ XXXX)
) Wellons
Sen.)

moves to amend the bill on page 1, line 16

by deleting the words "~~terminate~~" at the end of two yearsand adding"end when the permanent plan has been achieved for the child and approved by the court".

And on line 5, page 2add "to conduct follow-up investigations to insure that the orders of the courtare being properly executed and to report to the courtwhen the needs of the juvenile are not being met".

And by deleting on page 2, line 7 (b)up to "not being met" on line 10.

And on line 13 (c), delete beginning with "The" and ending with "demand". Substituting "The Guardian ad Litem has the authority to receive".

Also on line 15. beginning with "Neither and ending with invoked on line 16. And substituting "no privilege other than the attorney-client privilege".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 128*

Short Title: Interest on Money Judgments. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

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.

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.

(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, 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. 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.

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February 22, 1999

MEMORANDUM

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

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 128 - INTEREST ON MONEY JUDGMENTS -** Senator Hartsell

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 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.

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: February 22, 1999

RE: Senate Bill 128 (Interest on Money Judgments)

General Comments

This bill 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 draft also makes other stylistic updates.

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.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 128

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

S128-ARU-001

Date 2-23 ,1999

Comm. Sub. [ ]
Amends Title [ ]

Senator

moves to amend the bill on page 1, line 23,
by deleting the word "judgment," and substituting the words
"judgment in an action other than contract,"; and

on page 2, line 5,
by deleting the date "~~1991~~" and substituting the date "~~1981~~".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

SENATE JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, February 24, 1999

Sen. Cooper,
submits the following with recommendations as to passage:

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

S.B. **57** Lose Control Lose Your License

Draft Number:	PCS7525
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **128** Interest on Money Judgments

Draft Number:	PCS2539
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Will take to Sen. Cooper

VISITOR REGISTRATION SHEET

J-1 SEN. COOPER-CHAIR 2-23-99

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Charles Comer	NCATL
Dick Taylor	NCATL
Alan Mikes	Bailey & Dixon LLP
Floyd M. Lewis	General Statutes Commission
Bry Hall	General Statutes Commission
Leanne Winner	NCSBA
Matt Osborne	AOC
Krishna Medlin	Covenant w/ NCs Children
LANA DIAB	AOC
Shaunese Kinsdale	DSS
Elena Mora	AOC
Chris Mabe	AOC
Mark Black	NCBAA
Lou Rupert	CJPC
Berry Jenkins	Carolina AGC

MINUTES
SENATE JUDICIARY I COMMITTEE
MARCH 2, 1999

The Senate Judiciary I Committee met on March 2, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Wellons to continue the discussion from the February 23, 1999 meeting of **Senate Bill 25 – AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.**

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

Sharnese Ransom, with the Department of Social Services, was recognized to answer questions from the Committee.

Senator Gulley moved to give the Proposed Committee Substitute for Senate Bill 25 a favorable report and re-refer the bill to the Appropriations Committee. The motion carried by a majority voice vote.

Senator Cooper, sponsor of **Senate Bill 197 – AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE** – gave an overview of the bill.

The following people were recognized to speak on the bill:

Katie Dorsett - Secretary of the N. C. Dept. of Administration
Leslie Starsoneck – CCPS
Doug Kappler – SBI

Discussion of Senate Bill 197 will continue at the next meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, March 2, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 25	Guardian Ad Litem/Attys	Wellons
SB 197	Safe Families Act	Cooper

Senator Cooper, Chair

SENATE JUDICIARY COMMITTEE

AGENDA - March 2, 1999

SB 25	Guardian Ad Litem/Attorneys	Wellons
SB 197	Safe Families Act	Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S25-PCSSE-001
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill 25
THIS IS A DRAFT 1-MAR-99 15:46:59
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.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

SENATE JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, March 02, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **25** Guardian Ad Litem/Attys

Draft Number:	PCS6544
Sequential Referral:	Appropriations
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

99-LYAB-014(2.3)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Safe Families Act. (Public)

Sponsors: Senator Cooper.

Referred to:

DRAFT
FOR REVIEW ONLY

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

"**§ 50B-4. Enforcement of orders.**

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

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

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

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

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

person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall forward a copy to the sheriff of that county for entry into the National Crime Information Center registry pursuant to G.S. 50B-3(d)."

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

"**§ 1C-1702. Definitions.**

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

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

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

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

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

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

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

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

"(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local law-enforcement agency. The local law-enforcement agency shall respond to the request for assistance as soon as ~~practicable; provided, however, a local law-enforcement agency shall not be required to respond in instances of multiple complaints from the same complainant if the multiple complaints are made within a 48-hour period and the local law-enforcement agency has reasonable cause to believe that immediate assistance is not needed.~~ practicable. The local law-enforcement officer responding to the request for assistance ~~is authorized to~~ may take whatever steps are reasonably necessary to protect the complainant from harm and ~~is authorized to~~ may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where

feasible, the law-enforcement officer ~~is authorized to~~ may transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings."

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

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

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

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

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

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

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

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

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

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

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

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March 2, 1999

TO: Senator Roy Cooper, Senate Judiciary I, Chair

FROM: Jo B. McCants, Committee Co-Counsel

RE: Senate Bill 197- **Safe Families Act**

Senate Bill 197 is a recommendation of the Governor's Task Force on Domestic Violence. The bill makes several changes to our current domestic violence statutes to enhance enforcement in domestic violence cases. These changes include:

- **Entering domestic violence orders into a national database;**
- **Enforcing an out-of-state order or an order entered by an Indian tribe regardless of whether the order has been registered in North Carolina;**
- **Making a violation of an out-of-state order or an order entered by an Indian tribe a Class A1 misdemeanor**
- **Eliminating an officer's ability not to respond to multiple domestic violence complaints that occur within 48 hours; and**
- **Extending an officer's authority to make warrantless arrest when certain domestic violence offenses occur outside the officer's presence.**

Section 1 requires the sheriff to enter all domestic violence orders into the National Crime Information Center (NCIC) registry. Currently, the sheriff enters domestic violence orders in the Division of Criminal Information Network (DCI) which is a statewide database.

Section 2 deletes 50B-4(b) that requires an officer to arrest and take into custody without a warrant a person who is in violation of a domestic violence order. The person would then be taken before a district court judge to show cause why he or she should not be held in contempt. Prior to 1997, holding a contempt hearing was the only method available to the courts to punish a person in violation of a domestic violence order. However, in 1997, the General Assembly enacted G.S. 50B-4.1 which made the violation of a domestic violence protective order a Class A1 misdemeanor. Therefore, a person can now be arrested and charged with a misdemeanor offense.

In addition, Section 2 provides that full faith and credit will be given to domestic violence protective orders entered by a court in another state or Indian tribe regardless of whether the order has been registered in North Carolina. For enforcement purposes, an officer may rely upon a copy of the order and the statement of the person protected by the order that the order is valid.

However, if the person protected by the order chooses to register the out-of-state order, it should be registered with the clerk of superior court. The clerk is required to forward a copy of the order to the sheriff for entry into the NCIC.

Section 3 adds domestic violence protective orders to the list of exceptions from the definition of foreign judgments and the Uniform Enforcement of Foreign Judgments Act. Domestic violence protective orders are given full faith and credit under G.S.50B-4 regardless of whether the order has been registered in North Carolina.

Section 4 makes it a Class A1 misdemeanor to violate a domestic violence protective order entered by a court in state, out-of state, or by an Indian tribe.

Section 5 eliminates the current provision permitting law enforcement officers to not respond to multiple complaints of domestic violence when the complaints occur within a 48 hour period and the officer believes that immediate assistance is not needed.

Section 6 allows an officer to make a warrantless arrest when certain offenses are committed outside of the officer's presence. Current law allows an officer to make a warrantless arrest when a person commits any of the following: 1) simple assault; 2) assault on a female; 3) assault inflicting serious injury; 4) assault with a deadly weapon; or 5) assault by pointing a gun **and the offense is committed by a spouse, former spouse, or someone with whom the victim is living as if married**. Section 6 expands the provision to include the assaults listed when they occur between persons in a personal relationship as defined in 50B-1, i.e., persons who have a child in common; current or former household members; persons of the opposite sex who are in a dating relationship; and persons who are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren.

The section also allows an officer to arrest a person without a warrant if the person is in violation of a domestic violence protective order.

Section 7 provides that sections 4 (violation of a protective order) and 6 (expanded authority to make warrantless arrests) will become effective December 1, 1999. All other sections become effective October 1, 1999.

VISITOR REGISTRATION SHEET

Senate Judiciary I — 3-2-99
Name of Committee — Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Anne Dixon	NCCADV
Shawnee Ransome	DSS
Martha Glass	DOA
Katie Dorsett	DOT
Leslie Starsoneck	CCPS
Dave Nelson	AOC
Jonathan Williams	CCPS
[illegible]	Ruby Call & Stamper
Doug Koppler	SBI
KRISTIN DAVID	Legislative INTERN
[illegible]	AOC
BILL SCOGGIN	NC BAR ASSOC
George Reed	NC Council of Churches
Glen Peterson	NCDOA
John Jordan	Attorney at Law

VISITOR REGISTRATION SHEET

Name of Committee

Date

May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCAS
Dick Taylor	NCATL
[illegible]	NCDS
[illegible]	Gov. Office
Harriet Dial	NCAE
Bill McMurray	PSNC
JW Kaylor	Kaylor law firm
Mark Gleason	The Legislative Group
Christina Medlin	Covenant w/ NC's Children
Andy Romanet	N.C.L.M.
Scott Hannah	NCATL

MINUTES
SENATE JUDICIARY I COMMITTEE
MARCH 4, 1999

The Senate Judiciary I Committee met on March 4, 1999 at 9:30 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Rand to explain **Senate Bill 173 – AN ACT ALLOW THE ISSUANCE OF CERTAIN ABC PERMITS IN DESIGNATED NATIONAL HISTORIC LANDMARK DISTRICTS.**

Johnny Henderson, with the Christian Action League, was recognized to speak on the bill.

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

Senator Odom was recognized to explain **Senate Bill 12 – AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE OF THE PEOPLE.**

The following speakers were recognized:

John Medlin – Chairman of the Future of the Courts Commission
Larry Sitton – President of the N. C. Bar Association
The Hon. Burley Mitchell – Chief Justice of the N. C. Supreme Court
Leslie Bevacqua – N. C. Center for Business and Industry
Richard Taylor – Exec. Director of N. C. Academy of Trial Lawyers
Deborah Ross – Exec. Director of the ACLU
Michael Crowel – Member of the Future of the Courts Commission

Senator Cooper announced that the discussion of Senate Bill 12 would be continued at a future meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, March 4, 1999
TIME: 9:30 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 12	Judicial Appt./Voter Retention	Odom
SB 173	Nat'l. Historic Landmark Dist. Permit	Rand

Senator Cooper, Chair

SENATE JUDICIARY COMMITTEE

AGENDA - March 4, 1999

SB 12	Judicial Appointments/Voter Retention	Odom
SB 173	National Historic Landmark Dist. Permit	Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 173
Corrected Copy 3/2/99

Short Title: Nat'l Hist. Landmark Dist. Permits. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ISSUANCE OF CERTAIN ABC PERMITS IN DESIGNATED NATIONAL HISTORIC LANDMARK DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006 is amended by adding a new subsection to read:

"(n) National Historic Landmark District. -- The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4) and (6) located within the boundaries of a National Historic Landmark as defined in 16 U.S.C. § 470a(a)(1)(B) located in a county that meets all of the following requirements:

(1) Has approved the sale of malt beverages and unfortified wine but not mixed beverages.

(2) Has at least one city that has approved the operation of an ABC store and the sale of mixed beverages.

(3) Has at least 150,000 population based on the last federal census."

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

North Carolina General Assembly
Legislative Services Office

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March 4, 1999

MEMORANDUM

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

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 173 - National Historic Landmark District ABC Permits -** Senator Rand.

Senate Bill 173 would amend the alcohol beverage control law to allow mixed beverages permits to be issued for hotels and restaurants in national historic landmark districts in counties that have approved the sale of beer and wine, where at least one city in the county has approved ABC stores and the sale of mixed beverages, and the county has a population of at least 150,000 people based on the latest federal census, without approval at a local election. Included within the definitions of this provision would be Biltmore Estates in Buncombe County.

The bill would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

SENATE JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Thursday, March 04, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **173** Nat'l. Hist. Landmark Dist. Permits
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 12

Short Title: Judicial Appt./Voter Retention. (Public)

Sponsors: Senators Odom; Ballance, Carter, Clodfelter, Dannelly, Gulley, Hartsell, Hoyle, Jordan, Kerr, Kinnaird, Lee, Lucas, Martin of Guilford, Miller, Phillips, Plyler, Purcell, Rand, Reeves, Shaw of Cumberland, Warren, Weinstein, and Wellons.

Referred to: Judiciary I.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, 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 right and 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, so far as may be, from the influences and necessities of partisan political activity.

(3) Nomination, confirmation, 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 nominate a person to fill the vacancy. Prior to appointment, such nominations by the Governor shall be subject to confirmation of the General Assembly by three-fifths of the members of each house present and voting prior to appointment. For the purposes of this section, creation of a new judgeship within the Appellate Division creates a vacancy.

Each house of the General Assembly shall vote on confirmation within 60 calendar days of the date of nomination, except that no day shall be included within that calculation if it is:

(a) Between sine die adjournment of one regular session and convening of the next regular session; or

(b) During any period when the General Assembly has adjourned a regular session for more than 30 days jointly as provided under Section 20 of Article II of this Constitution.

If a nomination is made during either of the periods listed in subdivision (a) or (b) of this subsection, the Governor may convene the General Assembly in extra session for the purpose of considering confirmation of the nomination. No action of that extra session shall be valid after the second calendar day of that session, and that extra session may not consider any matters other than rules for the extra session, confirmation of the nomination, and adjournment sine die. The nomination may not be confirmed in any extra session other than one called under this subsection.

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 nomination is confirmed. 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.

At the last statewide election for members of the General Assembly held before the expiration of a regular term of office, 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.

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, confirmation, and appointment as prescribed in this section. In such case, the Governor may only nominate a person of the same political affiliation as the justice or judge who has not been retained in office. For the purpose of this section, the political affiliation of a nominee for justice or judge is determined as of 24 months preceding the date of the vacancy for which the nomination is made.

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. 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, confirmation, 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 his term of office, the resulting vacancy shall be filled by nomination, confirmation, 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, confirmation, 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 the Governor, confirmed by the General Assembly, 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 and Confirmation of Justices and Judges. Retention Elections.

"§ 7A-4.1. Nomination of justices and judges by Governor and confirmation by General Assembly.

(a) The office of Chief Justice and Justice of the Supreme Court and Judge of the Court of Appeals are filled by nomination by the Governor subject to confirmation by the General Assembly in accordance with Section 16 of Article IV of the Constitution.

(b) Nominees are subject to confirmation as provided in this subsection. A nominee is confirmed by passage of a joint resolution of the General Assembly. The Governor may withdraw a nomination at any time.

"§ 7A-4.2. Confirmation procedures.

(a) A legislative committee to which the issue of confirmation is referred may conduct an investigation of the 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 committee any information that the nominee determines to be appropriate.

(b) The committee shall be allowed to inspect the files of the Judicial Standards Commission by request of the chair of the committee. Notwithstanding the provisions of G.S. 7A-377, the files of the Judicial Standards Commission shall be made available to the committee. Testimony and other evidence presented to the committee is privileged in any action for defamation.

"**§ 7A-4.3. Governor to issue commissions to justices and judges.**

Every person duly nominated by the Governor as Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals and duly confirmed by the General Assembly shall be appointed by the Governor and shall procure from the Governor a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the joint resolution of confirmation.

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-4.4. 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-4.5. 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 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. 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.

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March 4, 1999

MEMORANDUM

TO: Senator Roy Cooper, Senate Judiciary Committee, Chair

FROM: Walker Reagan, Committee Counsel
Jo B. McCants, Committee Co-Counsel

RE: Senate Bill 12 - Judicial Appt./ Voter Retention.

Senate Bill 12 is a recommendation of the North Carolina Courts Commission. The bill requires a constitutional amendment and statutory changes. The constitutional amendment is subject to a referendum on November 7, 2000.

CONSTITUTIONAL AMENDMENT:

The North Carolina Constitution will be amended to provide that on and after January 1, 2001, the Governor shall nominate persons to fill vacancies in the offices of Chief Justice, Associate Justice, or Judge of the Appellate Division. Appointments by the Governor are subject to confirmation of the General Assembly by three-fifths of the members of each house present and voting.

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 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 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 judges in office on January 1, 2001, whose term extends beyond that date shall end on June 30, 2003. These 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 to chapter 7A of the General Statutes subject to the passage of the constitutional amendment. The new article sets forth the process for nominating and confirming Supreme Court Justices and Appellate Court Judges. The article also sets forth the process for retention elections.

a.) Nominations

- Governor nominates candidates for the Supreme Court and Court of Appeals.
- Governor may withdraw a nomination at any time.

b.) Confirmation

- Legislative committee appointed to consider confirmation may conduct an investigation of the nominee.
- Legislative committee is allowed to inspect the files of the Judicial Standards Commission upon the request of the committee chair.

c.) 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.

Finally, the bill 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 in the 2000 election.

REMARKS IN SUPPORT OF JUDICIAL SELECTION BY APPOINTMENT

March 4, 1999

The citizens of North Carolina are entitled to a judiciary composed of the most capable people available. A selection system that excludes judicial candidates on a basis irrelevant to the function of the office, bases selection on irrelevant criteria, or places selection in the hands of people who do not have access to information adequate to judge the qualifications of the candidates does not serve the goal of excellence that North Carolina should strive to achieve.

A particular political affiliation should be neither a prerequisite nor an obstacle to selection as a judge, since the function of the judiciary is generally to apply rather than to create law. That is not to say that a person's demonstrated zealous desire to impose a certain political position on others is not relevant to the question of that person's fitness to be a judge, for it may indicate that the person will not exercise the judicial restraint appropriate for the judicial branch of government. It is to say, however, that a person who understands and appreciates the appropriate role and limitations of the judicial branch should not be excluded from serving the people as judge or justice because his or her philosophy of government is represented more closely by one than the other of the recognized political parties.

Partisan political election of judges has been a practical reality in North Carolina for only a decade or two. Before Republicans gained sufficient numbers to influence or win state-wide elections, North Carolina judges at the appellate and Superior Court levels were in most instance appointed by the Governor, subject to "rubber stamp" nomination in the subsequent Democratic primary and election in the general election. This system had the effect of excluding Republican lawyers from serving as judges, regardless of the individual's intelligence, wisdom, dedication, learning, and sense of justice.

As election of Republican candidates to the judiciary has became more likely and, now, even common, we have witnessed major changes in the way our judges are chosen. Judges at all levels are *in fact* elected. Judicial races have become more visible and more expensive. While

we have not suffered some of the worst effects of partisan judicial races that have occurred in some of our sister states, we have had some instances of misleading and offensive campaigning; and the controls, voluntary and involuntary, through the Bar Association and the Judicial Standards Commission, in place to encourage fair and accurate campaigning do not immunize us from the abuses that other states have suffered.

To my mind, the single worst effect of judicial election, whether partisan or nonpartisan, is that the people making the selection usually do not have an adequate basis for making the decision. Judicial races are races of very low visibility. While interested groups make sincere efforts to acquaint the public with the candidates' qualifications, the educational effort often is ineffective. Even when descriptions of the experience and "qualifications" of the candidates is published and read, the reader has no real idea of whether the candidate possesses the necessary temperament and wisdom to serve ably as a judge or justice.

I often hear lawyers commenting as election day approaches that they still do not know who is running against whom for which judicial office - even now that state-wide elections are limited to the appellate judiciary. If the members of the profession that is most affected by the selection of judges do not feel informed about the candidates, surely the general electorate do not have the resources to make an informed decision.

That this concern has a basis in fact was demonstrated by the survey commissioned by the Futures Commission in which only a very small percentage of people (7% of eligible voters) could identify by name *even one* judicial candidate in the most recent election.

If the voters do not know anything about the candidates, how do they make choices? Many of them don't. Every election, the drop-off in the number of ballots cast for judicial candidates as compared with the more visible races (President, Governor, U.S. Senate, Congress, etc.) is significant. Of those voters who do cast ballots, if the race is between candidates of different parties, most voters vote along party lines, with the voter either voting a straight ticket or choosing a judicial candidate solely on the basis of the candidate's political affiliation.

It has been my view for a long time that appointment of the judiciary by a person or group

who have the opportunity to study the person as well as the qualifications of each of the candidates is preferable to election. While it is no longer true that I and my fellow Republicans are effectively disqualified by reason of our political registration from serving the people of North Carolina as judges, my interest in the quality of the North Carolina judiciary goes far beyond my political affiliation. My interest in government in general, and in the judiciary in particular, is an interest in *good* government. My experiences, as a lawyer, as a law professor at Wake Forest, as a law draftsperson through my work as a North Carolina commissioner to the National Conference of Commissioners on Uniform State Laws, as a District Court Judge, as an Associate Justice and Chief Justice of North Carolina, as a president of the North Carolina Bar Association, and most important, as a life-long citizen of the State of North Carolina, have convinced me that our judiciary would be strengthened and the people of North Carolina better served by a method of selection that makes initial selection the responsibility of a person or group who have the resources and interest to select the best person for the position, subject to the right of the citizens to reject the choice through a retention election.

While I have some objections to certain of the specific features of Senate Bill 12 and will be eager to participate in efforts to improve it, I enthusiastically support the basis idea that it promotes - that of judicial selection by appointment rather than by election.

Rhoda B. Billings

Table 12
Selection and Retention of Intermediate Appellate Court Judges

State	Initial Selection		Retention	
	Method*	Term	Method	Term
Alabama[1]	Partisan election	6 years	Partisan election	6 years
Alaska	Nominating commission	Until next general election but not less than 3 years	Retention election	8 years
Arizona	Nominating commission	Until next general election but not less than 2 years	Retention election	6 years
Arkansas	Partisan election	8 years	Partisan election	8 years
California	Gubernatorial appointment	Until next general election	Retention election	12 years
Colorado	Nominating commission	Until next general election but not less than 2 years	Retention election	8 years
Connecticut	Nominating commission	8 years	Reappointment by legislature	8 years
Florida	Nominating commission	Until next general election but not less than 1 year	Retention election	6 years
Georgia	Nonpartisan election	6 years	Nonpartisan election	6 years
Hawaii	Nominating commission	10 years	Reappointment by commission	10 years
Idaho	Nonpartisan election	6 years	Nonpartisan election	6 years
Illinois	Partisan election	10 years	Retention election	10 years
Indiana	Nominating commission	Until next general election but not less than 2 years	Retention election	10 years
Iowa	Nominating commission	Until next general election but not less than 1 year	Retention election	6 years
Kansas	Nominating commission	Until next general election but not less than 1 year	Retention election	4 years
Kentucky	Nonpartisan election	8 years	Nonpartisan election	8 years
Louisiana	Partisan election[2]	10 years	Partisan election[2]	10 years
Maryland	Nominating commission	Until next general election	Retention election	10 years
Massachusetts	Nominating commission	Life tenure[3]	N/A	N/A
Michigan	Nonpartisan election	6 years	Nonpartisan election	6 years
Minnesota	Nonpartisan election	6 years	Nonpartisan election	6 years
Missouri	Nominating commission	Until next general election	Retention election	12 years
Nebraska	Nomination commission	Until next general election at least 3 but less than five years after appointment	Retention election	6 years
New Jersey	Gubernatorial appointment	7 years	Reappointment by governor	Life tenure
New Mexico	Nominating commission	Until next general election	See footnote 4	8 years
New York	Nominating commission	5 years	Reappointment by governor	5 years
North Carolina	Partisan election	8 years	Partisan election	8 years
Ohio	Nonpartisan election	6 years	Nonpartisan election	6 years
Oklahoma	Nominating commission	Until next general election but not less than 1 year	Retention election	6 years
Oregon	Nonpartisan election	6 years	Nonpartisan election	6 years
Pennsylvania[5]	Partisan election	10 years	Retention election	10 years

State	Initial Selection		Retention	
	Method*	Term	Method	Term
South Carolina	Legislative election	6 years	Reelection by legislature	6 years
Tennessee[1]	Nominating commission	Until the biennial general election but not less than 30 days	Retention election	8 years
Texas	Partisan election	6 years	Partisan election	6 years
Utah	Nominating commission	Until next general election but not less than 3 years	Retention election	6 years
Virginia	Legislative election	8 years	Reelection by legislature	8 years
Washington	Nonpartisan election	6 years	Nonpartisan election	6 years
Wisconsin	Nonpartisan election	6 years	Nonpartisan election	6 years

Note: Initial selection is defined as the constitutional or statutory method by which judges are selected for a full term of office.

* In states which use nominating commissions, the governor makes the appointment.

1. Alabama and Tennessee have two intermediate appellate courts: the court of civil appeals which has civil jurisdiction, and the court of criminal appeals which has criminal jurisdiction. The selection process is the same for both.

2. Although party affiliation of judicial candidates appears on ballots, judicial primaries are open. This serves to give judicial elections a nonpartisan character.

3. Retirement is mandatory at age 70.

4. At the first general election following appointment, judges must run on a partisan ballot. If the judge wins the partisan election, subsequent retention is by nonpartisan retention ballot.

5. Pennsylvania has two intermediate appellate courts: the superior court and the commonwealth court. The selection process is the same for both.

THE PEOPLE HAVE A RIGHT TO ELECT THEIR JUDGES
DO NOT TAKE IT AWAY

VOTE NO ON SB 12

For 130 years the people of North Carolina have elected their judges. This important right was added to the North Carolina Constitution in 1868. SB 12 asks the voters to hand this right over to the Governor and the legislature. It also adds two levels of partisan politics to the system of selecting judges by requiring confirmation by 3/5 of both houses of the legislature and a retention election.

* The people have done an excellent job of electing judges. Popular election has resulted in racial, gender, geographic and political diversity on the bench. With very few exceptions, the North Carolina judiciary is highly qualified and highly respected. There is no evidence that the federal appointment process has produced better judges nationwide or in North Carolina.

* The judicial appointment process would result in an extension of the patronage system where appointments are made based on political connections and political contributions. Judges should be beholden to the people and the Constitution, not to the Governor and the legislature.

* A confirmation process involving hearings by both houses of the legislature will result in prolonged highly partisan battles that will discourage many qualified people from seeking judicial office. Judicial confirmation will be just one more political bargaining chip in legislative politics.

* Retention elections in other states have become referenda on controversial issues such as abortion and the death penalty. Frequently, judges who simply follow the law and constitutional precedent find themselves targeted by special interest groups.

* The best way to improve the quality of the judiciary in North Carolina is for the people to have more information about who they are voting for from the media and individuals and organizations familiar with the candidate's legal career. If the public is concerned about judicial candidates raising money to get their message out, public financing of judicial campaigns could be instituted for any candidate who opts in.

TRUST THE PEOPLE

For more information, contact Deborah Ross, Executive\Legal Director ACLU of North Carolina, (919) 834-3466

Important CLE Announcement See Page 7

The Constitutionalist

NORTH CAROLINA 1899–1999 BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

The Newsletter of the NCBA's Constitutional Rights & Responsibilities Section
Vol. 4, No. 2 January 1999

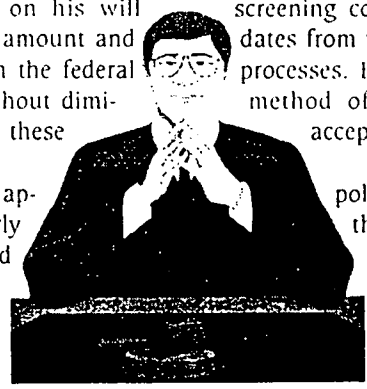
Judicial Selection: The Debate Continues

We Should Not Give Up the Right to Elect Our Judges

By Norman B. Smith

An elder member of the bar once gave a simple piece of advice: "Try to keep them from doing away with either the ballot box or the jury box." The wisdom of this admonition has become ever more apparent to me as the years go by, and I have learned that there is more of a connection between these two *box populi* than is immediately apparent.

The Declaration of Independence complained of the king's appointment of "judges dependant on his will alone, for the tenure of their offices and the amount and payment of their salaries." The provisions in the federal Constitution for lifetime tenure of judges without diminution of pay were in obvious response to these abuses.



The Jacksonian Democrats learned that appointed judges with long tenure could be nearly as tyrannical in their way as those who had been subject to the king's will. Hence, many states in the mid-19th century changed judicial selection from appointment to popular election. This reform was achieved in North Carolina by the Constitution of 1868.

Largely in reaction to the tainting of the elected judiciary by big city political machines, a number of states beginning in the 1940s returned to an appointive judiciary, usually involving a screening process in which the bar participates, and retention elections following initial appointive terms. This alteration seems to have fairly well run its course, the last change from an elected to an appointed judiciary having

Continued on page 4

Smith, a founding member of Smith, James, Rowlett & Cohen in Greensboro, has practiced civil rights law for more than 30 years.

Judges Should Not Be Subject To Recall by Popular Election

By Jim Exum Jr.

The debate over whether state judges should be appointed or elected is not so much about how judges are selected; it is really about how they should be retained once in office.

Almost all the state judges we have known initially obtained judicial office by appointment of the governor. No one much questions this as an appropriate selection method. Some would tweak it by requiring legislative approval or a screening committee that suggests a short list of candidates from which the governor may choose, or both these processes. But appointment by the governor as the basic method of putting judges initially in office is well-accepted and seldom challenged.

Any system of judicial selection will involve political machinations at some level. Politics in the selection of judges is like matter in the universe. It cannot be destroyed; it can only be more or less controlled and channeled. Since this is true, gubernatorial appointment is as good a system as any for selecting judges.

At issue is whether judges, once in office, should be subject to recall, or being put out of office, by periodic popular elections as are elected legislators and executive branch officials. Judges should not be subject to popular recall because of the fundamental nature of what judges do and how that differs from what officials in the other branches do.

Judges decide cases; that's all they do. They decide cases based on law already laid down, either in the Constitution,

Continued on page 3

Exum, a former chief justice of the North Carolina Supreme Court, is a member of Smith Helms Mullis & Moore, L.L.P., in Greensboro.

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Exum: Don't Subject Judges to Recall

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the state statutes or prior cases. Judges do not make law unless the decision in a particular case requires a novel interpretation of a statute, the Constitution, or some extension of a principle laid down in prior decisions.

Unlike governors and legislators, judges do not initiate, promote or set public policy. Unlike the other branches, judges are not self-starters; they act only when a matter is brought before them by some litigant. Neither are judges self-stoppers. Unlike the other branches, judges cannot avoid action; once before them, judges must decide the matter one way or the other.

Governors and legislators are the majority's representatives. Their antennae are carefully tuned to the wishes of the politically and financially powerful. Judges should march to a different drummer. They must be non-majoritarian. They must not be set off course because of whatever political winds are currently blowing. They must not look over their shoulders to see whether their decisions will be popular or well-received by the powerful.

Thucydides, the great Greek historian, wrote that "right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must." In our legal system, judges provide that equalizing power to ensure that the strong do not do what they can merely by virtue of their strength, and the weak do not suffer what they must merely by virtue of their weakness.

"An impartial judiciary means one unaffected by any concern other than the merits of the cases it adjudicates. Judges must not only be impartial; they must also seem to be so."

The reasons, then, why judges should not be subject to recall by popular election are found in the purposes of popular elections in a democratic society and the role of judges in that society.

Popular elections should be about competing public policies as the candidates with power to adopt or reject those policies espouse them. Judges don't have that power, so judicial elections cannot be about those things. Judicial campaigns necessarily focus on personal attributes of the candidates: party affiliation, "media savvy," telegenic countenances, access to money, and even, sometimes, their given names.

Sometimes candidates are perceived, or labeled, as "liberal" or "conservative." None of these things has any relevance to the candidate's capacity for being a good judge, not even the candidate's personal political views. Indeed, the true test of a good judge is how well the judge can set aside personal views and predilections and decide cases on the basis of the law and its application to the facts. Neither winning personalities, telegenic countenances, access to money, nice sounding, familiar names, nor the absence of these things, qualify, nor disqualify, one for judicial office. Yet the outcome of judicial elections often depends on the presence or absence of one or more of these very qualities.

To perform their non-majoritarian role as adjudicators under law and protectors of individual rights, judges must be and must be seen to be both independent and impartial.

An independent judiciary is a bulwark against tyranny and the surest guarantor of individual rights. An independent judiciary means one free from the influence of government's other branches and free from the sometimes irrational passions of the majority. Recall by popular election forces judges to fight political battles. It subjects them directly to political influence; indeed, it requires them to be politicians.

An impartial judiciary means one unaffected by any concern other than the merits of the cases it adjudicates. Judges must not only be impartial; they must also seem to be so. Subjecting judges to recall by popular election causes them to be concerned about matters extraneous to the merits of the cases before them. It makes our courts appear as just another political institution controlled by the masses and the powerful. This system thus undercuts the two attributes any respected judicial system must have: independence and impartiality.

Proponents of periodic judicial elections by which judges may be removed from office often say they are necessary to make judges "accountable" and to remove the occasional "bad" judge. But state judges are already the most accountable public officers in the land. Trial judges are accountable to appellate courts. Appellate judges are accountable to their colleagues. Their decisions can be changed by the legislature or by constitutional amendment if enough of the people are unhappy with them.

"Bad" judges, certainly in North Carolina, can be removed by a combined administrative and judicial procedure if they merely bring the judicial office into disrepute. No other elected public official in this state is subject to such a removal process. Why else should an incumbent judge be removed?

Has there ever been a "bad" judge removed from office through the electoral process? In Guilford County, the senior bar recalls Judge Hoyle Sink, who they say had developed a certain amount of judicial arrogance and was defeated in an election by Judge Walter Crissman back in the early '50s. But Judge Sink was a distant cousin of my wife; so he could not have been too bad.

Even if some bad judges have been removed electorally, the probabilities are that the electoral process will remove more good judges from office than bad ones. In recent history, Associate Justice Louis Meyer and Associate Justice Jim Wynn on the N.C. Supreme Court, and Judge Clarence Horton on the N.C. Court of Appeals were, by all accounts, good judges. All were removed from office by the electoral process. This is not to say that their successors will not also be good judges.

But if all we are doing with judicial elections is removing one good judge to be replaced by another good judge, then, in the overall scheme of things, the individuals involved notwithstanding, it is hardly worth the time and effort. It is certainly not worth the damage these elections do to judicial independence and judicial impartiality. ◆

Smith: Don't Give Up the Right to Elect

ntinued from page 1

een in Rhode Island in 1994.

There is no demonstrated need for North Carolina belatedly to discard such an important part of the people's franchise. All claimed flaws of an elective judicial system can be remedied by means less drastic than giving up the right to vote.

North Carolina, because of its traditionally honest government, has been less affected by the claimed flaws of judicial elections, than some other states have experienced. Almost all of North Carolina's elected judges of both political parties have proven themselves to be moderate and centrist, just like the great bulk of the voters who elected them. Our judiciary has been essentially free from corruption. Rarely have our North Carolina judges shown favor in their decision-making to supporters and contributors.

It is true that some of the other state elected judiciaries have been plagued in recent years by corruption and favoritism. Yet, it is also true that there have been recent cases of bribery involving even federal judges with lifetime appointment; and a number of these judges also have been notorious for their open displays of favoritism toward political and ideological allies, and hostility against those with whom they disagree philosophically, socially or politically.

"Our elected state judges nowadays do a far better job of protecting the interests of minorities, the poor and the powerless ... ."

A principal argument in favor of switching to appointed judges is that they better will be able to maintain judicial independence from popular whims and caprices. It must be noted, however, that the people will only tolerate a certain level of judicial independence. At its extremes, judicial independence provokes impeachment efforts and even rebellion. More importantly, the genius of our legal system is that it rests primarily upon voluntary, not coercive, obedience to the law; and if our laws are interpreted and applied in such a way that legal institutions fall out of popular favor, the practice of voluntary compliance crumbles.

Another main, and somewhat related, argument in favor of an appointive judiciary, is that appointees, rather than electees, are more solicitous of the rights and interests of minorities, and the oppressed and powerless members of society. Certainly that seemed to be true when the federal courts were filled with Kennedy, Johnson and Carter appointees. Now, without question, the reverse is true, with the federal bench largely populated by Reagan and Bush appointees.

My own trial practice largely consists of asserting rights of minorities, the disadvantaged and weaker members of society. I assure you that now and for the last 10 years or so, I have filed virtually all my cases in state court and have tried my best to assert only state, and not federal, statutory, constitutional and common law claims, and to align parties where possible to avoid diversity of citizenship, so the cases will not be removable. Even our own state's attorney general has engaged in a pattern of removing to federal court, cases brought in state court against state officers and agencies.

The point is that our elected state judges nowadays do a far better job of protecting the interests of minorities, the poor and the powerless than their federal counterparts. I hold the fairly widely shared belief that there has been much progress in recent years toward gaining broad popular support for the fundamental concepts of equality and fairness enshrined in the Declaration of Rights; and while retrogression is always possible, the odds are against a return to the public mentality of the 1950s

The merits of judicial independence and protection of the weaker members of society are weighed ultimately, of course, by what one deems is the right and just result. Neither philosophers nor politicians will ever achieve unanimity on what is right and just in a particular factual circumstance. In the final analysis, right and justice that are the products of a free democratic electoral process are superior to right and justice that are prescribed by an elite cadre of philosopher rulers.

The founding fathers erected devices sufficient to prevent majority tyranny and whimsical, capricious popular choices by elected judges: constitutions that are difficult and slow to amend, the concept of *stare decisis*, a multilevel appellate structure, and, most importantly, decisions by judges elected by the people and not directly by the people themselves.

Yet another wise choice by the founding fathers operates to maximize the protection of the people against court-sanctioned governmental oppression: our system of dual sovereignty under dual constitutions and dual court systems. The protections of individual freedoms under our North Carolina Declaration of Rights in our dual system can never be inferior, and sometimes will be superior, to those under the federal Bill of Rights and 14th Amendment.

If in certain eras our appointed federal judges seem less than optimally solicitous of constitutional freedoms, their elected state counterparts are apt to bridge the gap by applying corollary provisions of our own Declaration of Rights. To the extent that we alter the means of choosing state judges to emulate the federal judicial selection process, we will upset this delicately balanced constitutional duality.

A great advantage of an elected judiciary, at least where the electorate exercises meaningful choice, is that judges tend to treat all who come before them — litigants, witnesses and lawyers alike — with greater respect, civility and sensitivity than do judges in an appointed system. Even if the elected judges exercise such restraint primarily for the self-serving reason of avoiding defeat in the next election, the result is most plainly in the public interest. After all, the spirit which permits the laws to be largely obeyed voluntarily, rather than coercively, thrives when those responsible for administering for justice do so in a kind and courteous way.

The remaining arguments against an elected judiciary can

be disposed of by recognizing that they do not identify problems inherent in the election of judges, and can be addressed by means which are less drastic than abolishing judicial elections:

● **Judges are part of a political party machine.** The answer is to make judicial elections nonpartisan, as we already have done at the Superior Court level.

● **Multiple judgeships on the ballot are confusing and result in ill-informed voting.** The solution is to elect all judges, including appellate judges, by one or two member districts where the candidates reside, as we have recently begun to do at the Superior Court level. Districted elections also tend to enhance the opportunities of minority candidates for election, and to reduce the cost of campaigning.

● **Contributions to judicial candidates will lead to favoritism or the buying of judicial decisions.** Campaign finance reform is the answer here, just as it is in legislative, presidential and gubernatorial elections. Abuse of campaign funding is a problem in appointive systems, as well; in some states it is understood that a certain number of thousands of dollars must be given to the prevailing party or elected official to secure a judicial appointment.

● **The voters are not smart enough to decide who should be the judges.** The outcome of the 1998 Martin vs. Martin race for the Supreme Court of North Carolina should help dispel that notion. Mark Martin's supporters did a good job of getting the facts out to the voters, and by a 59 percent to 41 percent margin he was elected in a year which was not favorable overall for his political party.

Bar groups should evaluate and rate judicial candidates, as the Court Watch program has begun to do in North Carolina, and as the American Bar Association has done for years with respect to federal judicial nominees. The voters will react positively to this information, and their fully informed decisions will be better than uninformed ones.

● **Campaigns will be dominated by issues, and judges will be excluded from office because of controversial unpopular decisions.** This may not be so much of a problem in North Carolina. In the 1986 election, Chief Justice Exum and Justices Webb and Whichard won handily, despite a vigorous and expensive campaign mounted against them for decisions in death penalty and medical malpractice cases.

The presently proposed appointive system for North Carolina includes retention elections. Retention elections in other states have proven to be battlegrounds over judges' unpopular decisions, especially involving the death penalty and abortion. Therefore, the proposed change likely would worsen this perceived problem, not cure it.

● **Appointed judges will be more qualified than elected ones.** There is simply no evidence to back up this claim. Highly qualified judges, as well as unqualified judges, are found in both systems.

Finally, let me return to the connection between the jury box and the ballot box. Often I have marvelled at the respect and deference our elected state court judges pay to jury verdicts. Even when they strongly disagree with outcomes, state trial judges rarely grant new trials based on the weight of the evidence. In state courts, summary judgments and directed verdicts typically are granted only in extreme cases, and even a fair number of these are reversed on appeal. Every appellate lawyer knows that a verdict on his side in the lower court gives him a great advantage on appeal in the state court system.

By contrast, in the federal system with its appointed judiciary, not only have civil juries been reduced in size from 12 to six, but also at both the trial and appellate level, the judges in recent years with great frequency have either withdrawn cases from the jury by summary judgment or directed verdict, or have taken jury verdicts away on post-verdict motion or on appeal. A great deal of scholarly criticism has been directed at these practices of the federal judiciary that seem inconsistent with the Seventh Amendment. The lesson from this experience is that abandonment of popular selection of judges will lead inevitably to the evisceration of trial by jury. ◆

VISITOR REGISTRATION SHEET

Name of Committee

Date 3-4-99

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ann Fulton	ABC Commission
Barry Smith	Freedom Campaigns
Dick Taylor	NCATL
Charles Graves	NCATL
Jill Miller Deming	NCATL
Scott Hammond	NCATL
Jim Drennan	IOG
Deborah Ross	ACLU
Alicia Gregory	Poyner & Spruill
Jonathan Williams	CCPS
Ann Wilson	NCAWA
Benton Craig Jr	NCATL
Leslie Bevacqua	NCCBI
Alan Mebs	Bailey & Dixon LLP
Ken M Kellett	Moore & Van Allen
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Name of Committee

Date

May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Andy Lomont	N.C.L.M.
Lucius Pullen	Attorney
John May	NC CWA Council
John Mullin	Commission on Future of Justice
Allan Head	NC Bar Assoc.
Larry Sitton	"
Jill Scobee	NC Bar Assn
Michael Crowell	Courts Futures Comm'n

MINUTES
SENATE JUDICIARY I COMMITTEE
MARCH 9, 1999

The Senate Judiciary I Committee met on March 9, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and turned the Chair over to Senator Soles.

Senator Cooper was recognized to continue the explanation of **Senate Bill 197 – AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE.**

Senator Carter moved to adopt a Proposed Committee Substitute for discussion. The motion carried by a majority voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 2, Line 36; Page 2, Line 44; and Page 3, Line 34 (copy attached). The motion carried by a majority voice vote.

Jonathan Williams, with CCPS, was recognized to answer questions from the Committee.

Senator Wellons moved to give the Proposed Committee Substitute for Senate Bill 197 a favorable report as amended and to roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, March 9, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 197	Safe Families Act	Cooper

Senator Cooper, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S197-PCSSE-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 197
THIS IS A DRAFT 8-MAR-99 16:15:34
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Safe Families Act. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

"**§ 50B-4. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. ~~Said~~ This party may file and proceed with ~~such~~ that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the

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

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

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

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

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

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

"**§ 1C-1702. Definitions.**

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

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

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

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

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

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

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

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

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

"(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance

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

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

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

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

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

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

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

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

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), ~~or 14-33(c)(2)~~ 14-

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

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

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

Section 7. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-9-99

S. B. No. 197 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S197-PCSSE-002

Rep.) RAND

Sen.)

moves to amend the bill on page 2, line 36

( ) WHICH CHANGES THE TITLE

by inserting between the words "or" and "Indian" the phrase "the courts of an"; and

on page 2, line 44 by inserting between the words "or" and "Indian" the phrase "the courts of an"; and

on page 3, line 34 by inserting between the words "or" and "Indian" the phrase "the courts of an".

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Domestic Violence Orders
State Bureau of Investigation
March 2, 1999

Ex-Parte Orders

Active	1,002
*Dismissed	13,873
Expired	40,238
Total	55,113

Protective Orders

Active	8,856
*Dismissed	1,418
Expired	14,405
Total	24,769

Grand Total 79,792

*Dismissed means orders where the complainant requests the order to be dismissed after issuance but before expiration.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

SENATE JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, March 09, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **197** Safe Families Act

Draft Number:	PCS 8546
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Name of Committee

Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK. 3-9-99

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NCJCDC Raleigh
Jonathan Williams	CCPS
Martha Glass	DOA
Katie Barrett	DOA
Leslie Starsoneck	Govs Dr Risk Fmly
Sgt CM Allen	Durham Police Dept.
Scott Hammond	NCATL
Charles Cramer	NCATL
Matt Osborne	AOC
D Simmons	NCEquity
Anne Winner	NCCADV
Bill SCOGGIN	NC BAR ASSOC.
John Rustin	NCFPC
Helen Lyons	Meck Co DSS
Mary Corridia	Mecklenburg County
Doug Kapplan	SBI

VISITOR REGISTRATION SHEET

Name of Committee

Date

3-9-99

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Nancy Kiesenhofer	NC State Bureau of Investigation
Eddie Caldwell	HMCCTC, P.A.
Kristin DAVID	Legislative INTERN
Lee Hartsell	NCBA

MINUTES
SENATE JUDICIARY I COMMITTEE
MARCH 11, 1999

The Senate Judiciary I Committee met on March 11, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Rand to explain **Senate Bill 172 – AN ACT TO MAKE THE POSSESSION OF BLUE LIGHTS ILLEGAL.**

Senator Rand moved to adopt a Proposed Committee Substitute for discussion. The motion carried by a majority voice vote.

Senator Gulley moved to give the Proposed Committee Substitute for Senate Bill 172 a favorable report. The motion carried by a majority voice vote.

Senator Rand was recognized to explain **Senate Bill 165 – AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR A FELONY AND STORED IN THE STATE DNA DATABASE AND TO ESTABLISH PILOT PROGRAMS TO IMPLEMENT THIS PROCEDURE.**

After some discussion by the Committee, Senator Cooper asked that the bill be brought back at a future meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, March 11, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 165	DNA Sample on Arrest	Rand
SB 172	Possession of Blue Lights Illegal	Rand

Senator Cooper, Chair

SENATE JUDICIARY COMMITTEE

AGENDA - March 11, 1999

SB 165	DNA Sample on Arrest	Rand
SB 172	Possession of Blue Lights Illegal	Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 172

Short Title: Possession of Blue Lights Illegal. (Public)

Sponsors: Senators Rand; Carpenter, Carrington, Cooper, Hoyle, Kerr, Miller, Perdue, and Reeves.

Referred to: Judiciary I.

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE THE POSSESSION OF BLUE LIGHTS ILLEGAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-130.1 is amended by adding a new subsection to read:

"(c1) It is unlawful for any person to possess a blue light described in subsection (c) of this section in this State unless they are temporarily in possession of the light which is destined to be installed on a vehicle on which blue lights are authorized by subsection (d) of this section."

Section 2. This act becomes effective December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S172-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 172
THIS IS A DRAFT 10-MAR-99 20:11:23
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Possession of Blue Light Legal. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE THE POSSESSION OF BLUE LIGHTS LEGAL UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-130.1(d) reads as rewritten:

"(d) The provisions of subsection (c) of this section do not apply ~~to a~~ to:

(1) A publicly owned vehicle used primarily for ~~law-enforcement~~ law enforcement purposes or any other vehicle used primarily by ~~law-enforcement~~ law enforcement officers in the performance of their official duties.

(2) A person who temporarily possesses a blue light as defined in subsection (c) of this section that is destined to be installed on a vehicle on which blue lights are authorized by this section.".

Section 2. This act becomes effective December 1, 1999 and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
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B[redacted]. Robinson, Director
A[redacted]rative Division
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Terrence D. Sullivan, Director
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(919) 733-2578

March 11, 1999

MEMORANDUM

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

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 172 - POSSESSION OF BLUE LIGHT ILLEGAL-** Senator Rand

Senate Bill 172 would modify current law prohibiting a person other than law enforcement from possessing a blue light, to permit a person to temporarily possess a blue light if the light is destined to be installed on a law enforcement vehicle.

G.S. 20-130.1(c) makes it illegal for a person to install, activate, operate or possess a blue light in or on any vehicle in the State except G.S. 20-130.1(d) provides that this prohibition does not apply to a publicly owned vehicle used primarily for law enforcement purposes, or any other vehicle used primarily by law enforcement officers in the performance of their official duties.

This bill will add an exception to the general prohibition against possessing a blue light in a non-law enforcement vehicle, for a person who is temporarily transporting a blue light that is destined to be installed on a law enforcement vehicle. The prohibition on activating and operating a blue light other than for law enforcement purposes would still apply.

The bill becomes effective December 1, 1999.

§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;

(2) A highway patrol car;

(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;

(4) An ambulance;

(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for transplantation;

(6) A fire-fighting vehicle;

(7) A school bus;

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;

(10) A vehicle operated by medical doctors or anesthetists in emergencies;

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;

(13) A light required by the Federal Highway Administration;

(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;

(15) A vehicle operated by an emergency medical service as an emergency support vehicle; and

(16) A State emergency management vehicle.

(c) It is unlawful for any person to install or activate or operate a blue light in or on any vehicle in this State. It is unlawful for any person to possess a blue light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "blue light" means an operable blue light not sealed in the manufacturer's original package which:

(1) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(d) The provisions of subsection (c) of this section do not apply to a publicly owned vehicle used primarily for law-enforcement purposes or any other vehicle used primarily by law-enforcement officers in the performance of their official duties.

(e) Violation of subsection (a) or (c) of this section is a Class 1 misdemeanor.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, March 15, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **172** Possession of Blue Lights Illegal

Draft Number:	PCS 2591
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Short title amended also; Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 165

Short Title: DNA Sample on Arrest. (Public)

Sponsors: Senators Rand; Albertson, Allran, Ballance, Ballantine, Carpenter, Carrington, Carter, Cochrane, Cooper, Dalton, Dannelly, East, Forrester, Foxx, Garrou, Garwood, Hagan, Hartsell, Horton, Kerr, Lucas, Martin of Pitt, Martin of Guilford, Metcalf, Miller, Moore, Reeves, Robinson, Rucho, Shaw of Cumberland, Shaw of Guilford, Soles, Warren, Webster, Weinstein, and Wellons.

Referred to: Judiciary I.

February 23, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR A FELONY AND STORED IN THE STATE DNA DATATBASE AND TO ESTABLISH PILOT PROGRAMS TO IMPLEMENT THIS PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample.**

(a) Any person who is arrested for committing a felony must provide his or her DNA sample pursuant to this section for DNA analysis and testing. It is the duty of the arresting law enforcement officer to obtain the arrested person's DNA sample and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. The DNA sample must be taken by a qualified member of the health profession. No unreasonable or unnecessary force shall be used to obtain the DNA sample.

(b) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank pursuant to Article 13 of Chapter 15A of the General Statutes.

(c) The following definitions apply in this section:

(1) 'DNA' is as defined in G.S. 15A-266.2(2).
(2) 'DNA record' is as defined in G.S. 15A-266.2(3).
(3) 'DNA sample' means a sample of body tissue, blood, or other bodily fluid that is appropriate for DNA testing or analysis by the SBI Laboratory pursuant to Article 13 of Chapter 15A of the General Statutes. The term includes a DNA blood sample as defined in G.S. 15A-266.2(4) and a DNA fluid or tissue sample as defined in G.S. 15A-266.2(4a).
(4) 'SBI' means the State Bureau of Investigation."

Section 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System.
(2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.
(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.
(4) "DNA Blood Sample" in this Article means a blood sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.
(4a) "DNA Fluid or Tissue Sample" in this Article means a sample of saliva, hair, body tissue, or bodily fluid other than blood that is provided by a person arrested for a felony and submitted for DNA analysis as required by G.S. 15A-502A.
(5) "FBI" means the Federal Bureau of Investigation.
(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law enforcement, and for liaison with the FBI regarding the State's participation in CODIS.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article."

Section 3. G.S. 15A-1266.5 reads as rewritten:

"**§ 15A-266.5. Tests to be performed on ~~blood sample.~~ DNA blood sample or DNA fluid or tissue sample.**

(a) The tests to be performed on each DNA blood sample and each DNA fluid or tissue sample are:

(1) To analyze and type the genetic markers contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank."

Section 4. The catch line of G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood sample.~~ blood, other bodily fluid, or tissue samples.**"

Section 5. G.S. 15A-266.8 reads as rewritten:

"**§ 15A-266.8. DNA database exchange.**

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to G.S. 15A-266.7 and G.S. 15A-502A and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA

profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of ~~blood~~ samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system."

Section 6. G.S. 15A-266.10(a) reads as rewritten:

"(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony arrest or conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement."

Section 7. G.S. 15A-1382 reads as rewritten:

"**§ 15A-1382. Reports of disposition; ~~fingerprints.~~ fingerprints and DNA samples.**

(a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. When a DNA sample is taken from the defendant pursuant to G.S. 15A-502A prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition.

(b) When a defendant is found guilty of any felony, regardless of the class of felony, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60

days following disposition. If a convicted felon was not fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, his fingerprints shall be taken and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation.

(c) If a convicted felon did not have a DNA sample taken pursuant to G.S. 15A-502A prior to the disposition of the case, then a DNA sample shall be taken from the felon in accordance with Article 13 of this Chapter and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation as provided by Article 13 of this Chapter."

Section 8. G.S. 7A-608.1 reads as rewritten:

"**§ 7A-608.1. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and his fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile pursuant to G.S. 15A-502A."

Section 9. By November 1, 1999, the Administrative Office of the Courts in cooperation with the Department of Justice shall develop a pilot program to implement this act by November 1, 1999. The Administrative Office of the Courts after consulting with the Department of Justice shall designate three counties to participate in the pilot program.

Section 10. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of two hundred fifty thousand dollars ($250,000) for the 1999-2000 fiscal year and the sum of two hundred fifty thousand dollars ($250,000) for the 2000-2001 fiscal year to implement the pilot program established in Section 9 of this act.

Section 11. Sections 9 and 11 of this act are effective when it becomes law. Section 10 of this act becomes effective July 1, 1999. The remainder of this act becomes effective December 1, 1999, and applies to arrests made on or after that date in those counties designated by the Administrative Office of the Courts as participants in the pilot program.

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March 11, 1999

MEMORANDUM

TO: Senator Roy Cooper, Senate Judiciary I, Chair

FROM: Jo B. McCants, Committee Co-Counsel

RE: **Senate Bill 165- DNA Sample on Arrest**

This bill requires any person arrested for committing a felony to provide a DNA sample. The bill also requires that a DNA sample be taken from a juvenile when jurisdiction over the juvenile is transferred to superior court. Currently, any person convicted of certain criminal offenses must provide a DNA sample upon entrance into jail or prison, or as a condition of parole or a suspended sentence.

Section 1. The DNA Sample.

- A DNA sample is a sample of body tissue, blood, or other bodily fluid.
- Sample must be provided by anyone arrested for committing a felony.
- Sample must be taken by qualified health professional.
- Law enforcement officer must forward sample to laboratory for analysis and testing.
- No unreasonable or unnecessary force may be used to obtain sample.
- Sample stored and maintained in the State DNA Databank

Section 2. "DNA fluid or tissue sample" is defined as a sample of saliva, hair, body tissue, or bodily fluid other than blood that is provided by a person arrested for a felony and submitted for DNA analysis.

Section 3. Amends current law to require the same DNA tests to be performed on DNA fluid and tissue samples that are currently performed on blood samples.

Section 4. Amends the catch line in G.S. 15A-266.7 to include additional forms of DNA samples. G.S. 15A-266.7 allows the SBI to adopt rules governing the procedures used

in submitting, identifying, analyzing, storing, and typing results of DNA samples.

Section 5. Amends current law to require the SBI to receive, store, analyze and file the DNA record of samples received as a result of a felony arrest in the same manner as they currently receive, store, analyze and file DNA samples obtained upon conviction.

Section 6. Amends current law to allow a person who provided a DNA sample upon a felony arrest to have the record and profile of the DNA sample expunged. The bill provides that the expungement may occur if the felony arrest has been reversed and the case dismissed. Note: The "reversed and dismissed" language may need to be amended because an arrest is not reversed or dismissed.

Section 7. Amends current law to require that when a DNA sample is taken upon a felony arrest, a report of the disposition of the case must be made to the SBI within 60 days following the disposition. In addition, if a convicted felon did not provide a DNA sample upon arrest, the sample must be taken following conviction in accordance with current law. Currently, these requirements exist for fingerprinting a defendant.

Section 8. Amends current law that requires a juvenile who is transferred to superior court to be fingerprinted, to also require that a DNA sample be taken from the juvenile. Note: This provision will actually amend G.S. 7B- 2201 since the applicable section of the Juvenile Justice Bill will become effective July 1, 1999.

Sections 9 and 10. Requires the Administrative Office of the Courts to develop a pilot program in 3 counties to implement this act by November 1, 1999. An appropriation of $250,000 will be made to the AOC in fiscal year 1999-2000 and an additional $250,000 will be appropriated for fiscal year 2000-2001 for the implementation of the pilot programs.

Section 11. Sections 9 and 11 of the act become effective when it becomes law. Section 10 becomes effective July 1, 1999.The remainder of the bill becomes effective December 1, 1999, and applies in the designated pilot counties.

VISITOR REGISTRATION SHEET

Judiciary I — 3-11-99

Name of Committee — Date

~~May 22, 1998~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Deborah Ross	ACLU
Charles Cromer	NCATL
John Rustin	NCFPC
Krista David	Legislative INTERN
John May	NC CWA Council
Patricia G. Young	ACLU/SCSL
Kim Nisse	Fam. Observer Mag

MINUTES
SENATE JUDICIARY I COMMITTEE
MARCH 16, 1999

The Senate Judiciary I Committee met on March 16, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Carpenter to explain **Senate Bill 170 – AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT AND TO RAISE THE STANDARD OF PROOF IN PROCEEDINGS FOR CIVIL CONTEMPT.**

Walker Reagan, Committee Counsel, was recognized to explain the technicalities of the bill.

Bill Scoggin, with the N. C. Bar Association, was recognized to answer questions from the Committee.

After discussion by the Committee, Senator Cooper asked that the bill be sent to Senator Clodfelter's subcommittee.

Senator Hartsell was recognized to explain **Senate Bill 129 – AN ACT TO REPEAL ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE RELATING TO BULK TRANSFERS AND TO ENACT CONFORMING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.**

Professor Floyd Lewis – Campbell Law School – was recognized to explain the technical aspects of the bill.

After discussion by the Committee, Senator Cooper asked that the bill be brought back at a future meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, March 16, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 129	Repeal UCC Article on Bulk Transfers	Hartsell
SB 170	Restructure Civil Contempt	Carpenter
SB 255	State Agency Telephone Menus	Albertson
SB 272	Huntersville Photo Enforcement	Odom

Senator Cooper, Chair

SENATE JUDICIARY COMMITTEE

AGENDA - March 15, 1999

SB 129	Repeal UCC Article on Bulk Transfers	Hartsell
SB 170	Restructure Civil Contempt	Carpenter
SB 255	State Agency Telephone Menus	Albertson
SB 272	Huntersville Photo Enforcement	Odom

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 170

Short Title: Restructure Civil Contempt. (Public)

Sponsors: Senators Carpenter; and Ballance.

Referred to: Judiciary I.

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT AND TO RAISE THE STANDARD OF PROOF IN PROCEEDINGS FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 5A-21(b) reads as rewritten:

"(b) A person who is found in civil contempt may be imprisoned as long as ~~his~~ the civil contempt ~~continues,~~ continues but not to exceed 12 months, unless the contempt is failure by a person not arrested for the crime to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General Statutes. In that case, ~~he~~ the person may not be imprisoned more than 90 days unless ~~he~~ the person is arrested on probable cause."

Section 2. G.S. 5A-23(e) reads as rewritten:

"(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged contemnor. If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt. The facts must be established by clear and convincing evidence."

Section 3. This act is effective when it becomes law and applies to all proceedings for civil contempt held on or after that date. Section 1 of this act applies to all persons imprisoned for civil contempt on or after that date and to all persons currently imprisoned for civil contempt.

SENATE BILL 170:
RESTRUCTURE CIVIL CONTEMPT

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Carpenter
Date:	March 16, 1999	**Summary by:**	O. Walker Reagan, Committee Co- Counsel
Version:	1st Edition		

SUMMARY: Senate Bill 170 amends the civil contempt law to put a maximum time of imprisonment for civil contempt at 12 months and requires that a finding of contempt by the court must be by clear and convincing evidence.

CURRENT LAW: Under current law, a person found to be in civil contempt by a court may be incarcerated indefinitely until the person complies with the orders of the court and purges him or herself of the contempt. Civil contempt is permitted under the law to give the court the power to enforce orders of the court. The law requires that the court find that the person has the ability to comply, but that the person refuses to comply with the orders of the court. The person imprisoned is considered to have the ability to gain his or her release by following the orders of the court. Civil contempt differs from criminal contempt in several ways. Relevant to this bill, a person can be held in criminal contempt for a maximum of 30 days as punishment for violating orders of the court.

Under current law the court must simply find by the greater weight of the evidence facts that constitute civil contempt and must specify what action must be taken to purge the civil contempt.

BILL ANALYSIS: Section 1 of the bill would add a limit of a maximum of 12 months for the period a person found to be in civil contempt could be imprisoned. The person found in contempt could still purge him or herself of contempt and be released from prison anytime prior to the end of the 12 months period.

Section 2 amends the subsection that sets out findings required by the court in civil contempt proceedings to establish that the facts must be found by a higher standard of clear and convincing evidence instead of by the simple standard of the greater weight of the evidence as would now apply in these proceedings.

The bill would become effective when it becomes law and would apply to all proceedings for civil contempt held on or after that date. The limit on the maximum amount of time a person could be imprisoned for contempt would apply to all persons imprisoned on or after the effective date, as well as to all person currently imprisoned for civil contempt.

CHAPTER 5A.
Contempt.

ARTICLE 1.

Criminal Contempt.

§§5A-1 to 5A-10. Reserved for future codification purposes.

§ 5A-11. Criminal contempt.

(a) Except as provided in subsection (b), each of the following is criminal contempt:

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

(4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.

(5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

(6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.

(7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.

(8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.

(9) Willful communication with a juror in an improper attempt to influence his deliberations.

(9a) Willful refusal by a defendant to comply with a condition of probation.

(10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

The grounds for criminal contempt specified here are exclusive, regardless of any other grounds for criminal contempt which existed at common law.

(b) No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

(c) This section is subject to the provisions of G.S. 7A-276.1, Court orders prohibiting publication or broadcast of reports of open court proceedings or reports of public records banned. (1977, c. 711, s. 3; 1994, Ex. Sess., c. 19, s. 1.)

§ 5A-12. Punishment; circumstances for fine or imprisonment; reduction of punishment; other measures.

(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three, except that a person who commits a contempt described in G.S. 5A-11(8) is subject to censure, imprisonment not to exceed 6 months, fine not to exceed five hundred dollars ($500.00), or any combination of the three and a person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of G.S. 15A is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three.

(b) Except for contempt under G.S. 5A-11(5) or 5A-11(9), fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:

(1) The act or omission was willfully contemptuous; or

(2) The act or omission was preceded by a clear warning by the court that the conduct is improper.

(c) The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.

(d) A person held in criminal contempt under this Article may nevertheless, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt. If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in G.S. 5A-21(c).

(e) A person held in criminal contempt under G.S. 5A-11(9) may nevertheless, for the same conduct, be found guilty of a violation of G.S. 14-225.1, but he must be given credit for any imprisonment resulting from the contempt. (1977, c. 711, s. 3; 1985 (Reg. Sess., 1986), c. 843, s. 1; 1987 (Reg. Sess., 1988), c. 1040, s. 2.)

§5A-13. Direct and indirect criminal contempt; proceedings required.

(a) Criminal contempt is direct criminal contempt when the act:

(1) Is committed within the sight or hearing of a presiding judicial official; and

(2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and

(3) Is likely to interrupt or interfere with matters then before the court.

The presiding judicial official may punish summarily for direct criminal contempt according to the requirements of G.S. 5A-14 or may defer adjudication and sentencing as provided in G.S. 5A-15. If proceedings for direct criminal contempt are deferred, the judicial official must, immediately following the conduct, inform the person of his intention to institute contempt proceedings.

(b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure required by G.S. 5A-15. (1977, c. 711, s. 3.)

§5A-14. Summary proceedings for contempt.

(a) The presiding judicial official may summarily impose measures in response to direct criminal contempt when necessary to restore order or maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt.

(b) Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of

measures in response to contempt. The facts must be established beyond a reasonable doubt. (1977, c. 711, s. 3.)

§ 5A-15. Plenary proceedings for contempt.

(a) When a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when he may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If the criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.

(b) Proceedings under this section are before a district court judge unless a court superior to the district court issued the order, in which case the proceedings are before that court. Venue lies throughout the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judge is the trier of facts at the show cause hearing.

(e) The person charged with contempt may not be compelled to be a witness against himself in the hearing.

(f) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If the person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.

(g) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt. (1977, c. 711, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 44.)

§5A-16. Custody of person charged with criminal contempt.

(a) A judicial official may orally order that a person he is charging with direct criminal contempt be taken into custody and restrained to the extent necessary to assure his presence for summary proceedings or notice of plenary proceedings.

(b) If a judicial official who initiates plenary proceedings for contempt under G.S. 5A-15 finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person, pursuant to G.S. 15A-305. A person arrested under this subsection is entitled to release under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes. (1977, c. 711, s. 3.)

§5A-17. Appeals.

A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge. (1977, c. 711, s. 3.)

§§5A-18 to 5A-20. Reserved for future codification purposes.

ARTICLE 2.

Civil Contempt.

§5A-21. Civil contempt; imprisonment to compel compliance.

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the order; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as his civil contempt continues, unless the contempt is failure by a person not arrested for the crime to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General Statutes. In that case, he may not be imprisoned more than 90 days unless he is arrested on probable cause.

(c) A person who is found in civil contempt under this Article may, nevertheless, for the same conduct, be found in criminal contempt under Article 1 of this Chapter, but the total period of imprisonment arising from the conduct may not exceed the greater of:

(1) The period during which the contemnor may be imprisoned for civil contempt; or

(2) The period of imprisonment provided in G.S. 5A-12(a). (1977, c. 711, s. 3; 1979, 2nd Sess., c. 1080, s. 1.)

§ 5A-22. Release when civil contempt no longer continues.

(a) A person imprisoned for civil contempt must be released when his civil contempt no longer continues. The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt. Upon finding compliance with the specifications, the sheriff or other officer having custody may release the person without a further order from the court.

(b) On motion of the contemnor, the court must determine if he is subject to release and, on an affirmative determination, order his release. The motion must be directed to the judge who found civil contempt unless he is not available. Then the motion must be made to a judge of the same division in the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be. The contemnor may also seek his release under other procedures available under the law of this State. (1977, c. 711, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 45.)

§ 5A-23. Proceedings for civil contempt.

(a) Proceedings for civil contempt are either by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil contempt or by the notice of a judicial official that the alleged contemnor will be held in contempt unless he appears at a specified reasonable time and shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt.

(b) Except when the General Statutes specifically provide for the exercise of contempt power by the clerk of superior court, proceedings under this section are before a district court judge, unless a court superior to the district court issued the order in which case the proceedings are before that court. When the proceedings are before a superior court, venue is in the superior court district or set of districts as defined in G.S. 7A-41.1 of the court which issued the order. Otherwise, venue is in the county where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judicial official is the trier of facts at the show cause hearing.

(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged contemnor. If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself of the contempt.

(f) A person with an interest in enforcing the order may present the case for a finding of civil contempt for failure to comply with an order.

(g) A judge conducting a hearing to determine if a person is in civil contempt may at that hearing, upon making the required findings, find the person in criminal contempt for the same conduct, regardless of whether imprisonment for civil contempt is proper in the case. (1977, c. 711, s. 3; 1979, 2nd Sess., c. 1080, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1037, s. 46.)

§5A-24. Appeals.

A person found in civil contempt may appeal in the manner provided for appeals in civil actions. (1977, c. 711, s. 3.)

§5A-25. Proceedings as for contempt and civil contempt.

Whenever the laws of North Carolina call for proceedings as for contempt, the proceedings are those for civil contempt set out in this Article. (1977, c. 711, s. 3.)

Senator Carpenter

SB 170

CIVIL CONTEMPT

History

Civil contempt dates back to the early days of the English crown and early common law. Civil contempt was invoked to punish disrespect of the king's authority, a serious crime at the time.

Distinction between civil and criminal contempt

The purpose of civil contempt is to vindicate the dignity of the court and to secure the legal rights of private party litigants awarded by the court. The goal is to coerce the party in contempt. In short, civil contempt rights a private wrong. Supposedly, this contrasts with the purpose of criminal contempt. The purpose of criminal contempt is to vindicate the authority of the court by punishing the person in contempt. In short, criminal contempt rights a wrong against the State, a public wrong.

The procedural safeguards provided under criminal law and criminal procedure apply to defendants in criminal contempt cases to determine guilt. The highest standard of proof is employed: proof "beyond a reasonable doubt." In civil contempt actions, the defendant has none of the criminal safeguards even though the defendant faces the possibility of being imprisoned indefinitely. The defendant fails to receive a full hearing. The hearing is limited to whether there is a court order in effect and whether the defendant has the ability to comply with that order. Civil contempt cases employ a much lower standard of proof: proof by a "a preponderance of the evidence."

Reasons to limit the maximum period of imprisonment for civil contempt

1 The differences between civil and criminal contempt are blurred and more apparent than real, yet a defendant under civil contempt can lose his or her freedom for an indefinite time, even years or until death. A defendant for criminal contempt receives a fixed sentence.

2 Even though one can be imprisoned "forever" under civil contempt, all the procedural safeguards present for one who might be imprisoned for a crime are absent for civil contempt hearings.

3 The standard of proof for civil contempt is not adequate and far below the standard of proof required for ~~civil~~ CRIMINAL contempt.

4 The effectiveness of coercing a defendant using civil contempt is questionable and varies depending on such divergent matters as the personality and psychological makeup of the defendant, the stubborness of the defendant, or the firmness of the defendant's convictions.

5 Civil contempt gives too much discretion to a judge's determining whether the defendant has the ability to comply with the court's order. Relying on the judge's discretion leads to a lack of uniformity in orders of imprisonment for civil contempt.. The indefinite duration of the prison time heightens the inequity that can result. A judge's discretion is a poor substitute for all the due process safeguards present in a criminal contempt case.

6 Under civil contempt, a defendant can be incarcerated in North Carolina even though the defendant has committed no crime. Compare the length of jail time for Mr. Kelly Laurenzo with that of a criminal. What crime would he have had to have been convicted of to receive a sentence three years long, without the possibility of parole or time off for good behavior? And he is STILL in jail, with no end in sight.

The cornerstone of the distinction between criminal and civil contempt is that civil contempt is not a punishment. This distinction is totally artificial. Mr. Kelly Laurenzo and all others who are imprisoned for civil contempt are being punished. Many are being punished severely.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 129

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

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

February 18, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

Applicability of the article on investment securities. (G.S. 25-8-110).

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

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

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

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

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

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

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

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

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

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

Section 7. This act becomes effective October 1, 1999. Rights and obligations arising under Article 6 of Chapter 25 of the General Statutes and G.S. 25-9-111 before the effective date of this act remain valid and may be enforced as though those statutes had not been repealed.

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: March 15, 1999

RE: Senate Bill 129 (Repeal UCC Article on Bulk Transfers)

Senate Bill 129 repeals Article 6 of the Uniform Commercial Code, regulating bulk transfers, and makes conforming amendments to the Uniform Commercial Code ("UCC") and other sections of the General Statutes. Article 6, Bulk Transfers, was enacted in North Carolina as part of the UCC in 1965 and has been amended only once since its enactment.

Article 6 was revisited by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 1989. The Conference and the Institute concluded that Article 6 has become obsolete, that changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary. Both bodies therefore decided to withdraw their support for Article 6 and encourage those states that have enacted the Article to repeal it. Since that decision was made, 38 states have repealed Article 6 or its equivalent.

The General Statutes Commission circulated to its mailing list the proposal to repeal Article 6 and received no negative comments. Repeal is supported by the North Carolina Bar Association.

Bulk sales laws were originally drafted in response to a fraud perceived to be common around the turn of the century where a merchant would acquire stock in trade on credit, then sell the entire inventory ("in bulk") and abscond with the proceeds, leaving creditors unpaid. Article 6 in turn was drafted as a uniform replacement to individual state bulk sales laws. The Article imposes several duties on a buyer in bulk, primarily including the duty to give ten days' notice to the seller's creditors of the impending bulk transfer. It requires compliance even when there is

no reason to believe that the seller is conducting a fraudulent transfer and imposes strict liability for noncompliance. Failure to comply with the provisions renders the transfer ineffective as to the seller's creditors, even when the buyer has acted in good faith.

Modernization in the business and legal contexts in which sales are conducted have made this type of regulation of bulk sales unnecessary. Creditors are better able to make informed decisions about whether to extend credit. Changes in technology since the early 1900s have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively small cost. Creditors no longer face the choice of extending unsecured credit or no credit at all. Retaining an interest in inventory to secure its price has become relatively simple and inexpensive under Article 9 of the UCC - adopted in every state and the District of Columbia. Creditors also have greater opportunity to collect their debts. The adoption of state long-arm statutes have greatly improved the possibility of obtaining personal jurisdiction over a debtor who flees to another state. Moreover, if a bulk sale is fraudulent, creditors have remedies under the Uniform Fraudulent Transfer Act, enacted by the North Carolina General Assembly in 1997. There appears to be no evidence that in today's economy, fraudulent bulk sales are frequent enough, or engender credit losses significant enough, to require regulation of all bulk sales, particularly since the problem bulk sales laws are designed to address is now rare.

Moreover, in view of the burden Article 6 places on the buyer, benefit to the seller's creditors in a sale in which the buyer complies with the Article is slight. All the creditors receive is ten days' notice of the sale. The Article places no responsibility on the buyer to see that the seller's creditors are actually paid. Practitioners in this field also reported to the General Statutes Commission that the common practice in bulk sales is to draft the transfer documents in such a way as to eliminate the need for compliance with Article 6.

In light of these reasons, the General Statutes Commission recommends that the North Carolina General Assembly repeal UCC Article 6, Bulk Transfers.

VISITOR REGISTRATION SHEET

T-I 3-16-99

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Jim Blackburn	Association of County Commissioners
Floyd Lewis	General Statutes Commission
Charles C. Lewis	" " "
Bay Hall	"
Sandy Sands	WCSK
[illegible]	CCSR
[illegible]	[illegible]
[illegible]	AT&T
Maria DeVivo	DENR
Andy Romanet	N.C.L.M.
[illegible]	DOT-DMV
Scott Hannach	NCATL
Elaine Perkinson	NCDOT/DMV
Ruth Sappie	NCDOT
Chris [illegible]	visitor
Heather Friedlander	visitor
Sharon [illegible]	visitor
Marie [illegible]	visitor
Bernard Allen	SOS
Alan Wiles	Bailey & Dixon LLP
[illegible]	J.D. Attorney

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Joyce Pitts	LP Assoc.
Mark Beason	Capitol Group

MINUTES
SENATE JUDICIARY I COMMITTEE
MARCH 23, 1999

The Senate Judiciary I Committee met on March 23, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Clodfelter, Chairman of the Subcommittee, to explain **Senate Bill 178 – AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION** (Sen. Hartsell - Sponsor).

Professor Ron Link – UNC School of Law – was recognized to answer questions from the Committee.

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

Senator Odom was recognized explain **Senate Bill 272 – AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.**

Senator Clodfelter moved to amend the bill on Page 1, Line 7 (Amendment #1 attached). The motion carried by a majority voice vote.

Senator Ballantine moved to amend the bill on Page 1, Line 7 (Amendment #2 attached). The motion carried by a majority voice vote.

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

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, March 23, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 178	Uniform Prudent Investor Act	Hartsell
SB 210	Foreclosure Notice	Hartsell
SB 255	State Agency Telephone Menus	Albertson
SB 272	Huntersville Photo Enforcement	Odom

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - March 23, 1999

SB 178	Uniform Prudent Investor Act	Hartsell
SB 210	Foreclosure Notice	Hartsell
SB 255	State Agency Telephone Menus	Albertson
SB 272	Huntersville Photo Enforcement	Odom

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.

SENATE BILL 178:
Uniform Prudent Investor Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Hartsell
Date:	March 23, 1999	**Summary by:**	O. Walker Reagan
Version:	First edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 170 adopts the Uniform Prudent Investor Act to redefine the authority of trustees in North Carolina relative to the investment of trust assets of trusts created under North Carolina law. This bill is a recommendation of the General Statutes Commission.***

CURRENT LAW: Current law applicable to fiduciaries in general is set out in G.S. 36A-2, which is set forth in Section 2 of the bill. This statute requires the fiduciary to observe the standard of judgment and care under the circumstances which an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as a fiduciary. The law also requires fiduciaries with special skills to use those skills for the benefit of the trust.

BILL ANALYSIS: Section 1 of Senate Bill 178 would adopted a new prudent investor rule applicable to trustees of express trusts, including charitable, inter vivos, and testamentary trusts. This new rule would give the trustee greater investment discretion and will change the "prudent person" rule to be applicable to the total trust assets, and not limited to individual investments. This law is considered the "default" which will apply to existing and future trusts, unless the instrument creating the trust expressly provides otherwise, which could include expanding or restricting the standards applied by the Act. The act puts a general duty on the trustee to diversify, to avoid personal conflicts of interest, and to treat all beneficiaries impartially. The act also authorizes the trustee to delegate the investment and management functions to an agent when it is prudent to do so and requires the trustee to review the agent's actions.

Section 2 makes it clear that the current "prudent person" rule found in G.S. 36A-2 does not apply to trusts that are covered by Section 1 of the bill, the Prudent Investor Act.

A more detailed analysis of the bill is provided by the General Statutes Commission.

EFFECTIVE DATE: The bill becomes effective January 1, 2000 but the provisions of the act apply to trusts existing on that date as well as trusts created after that date. For trusts created prior to January 1, 2000, the act only applies to actions or omissions occurring after January 1, 2000.

S178-SMRU-001

§ 36A-1. Definition.

(a) For the purpose of this Article, the word "fiduciary" shall be construed to include a guardian, personal representative, collector, trustee, or any other person charged with the duty of acting for the benefit of another party as to matters coming within the scope of the relationship between them.

(b) As used in subsection (a) above, the word "person" shall be construed to include an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State of North Carolina.

(1977, c. 502, s. 2.)

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: March 19, 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 24 states and the District of Columbia have enacted the UPIA. In addition, there are about 13 other states that have enacted prudent investor statutes predating the UPIA but based on the total investment portfolio standard, including the following southeastern states: Virginia (Va. Code Ann. § 26-45.1), 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.

A Few Facts About
THE UNIFORM PRUDENT INVESTOR ACT

PURPOSE: This act removes much of the common law restriction upon the investment authority of trustees of trusts and like fiduciaries. It allows such fiduciaries to utilize modern portfolio theory to guide investment decisions. A fiduciary's performance is measured on the performance of the whole portfolio, not upon the performance of each investment singly. The act allows the fiduciary to delegate investment decisions to qualified and supervised agents. It requires sophisticated risk-return analysis to guide investment decisions.

ORIGIN: Completed by the Uniform Law Commissioners in 1994.

ENDORSED BY: American Bar Association
American Bankers Association

STATE ADOPTIONS:

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
District of Columbia
Hawaii
Idaho
Maine
Massachusetts
Minnesota
Missouri
Nebraska
New Hampshire
New Jersey
New Mexico
North Dakota
Oklahoma
Oregon
Rhode Island
Utah
Vermont
Washington
West Virginia

1999 INTRODUCTIONS:

Indiana
Iowa
Mississippi
Nevada
South Dakota
Virginia
Wyoming

For any further information regarding the Uniform Prudent Investor Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(2/11/99)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 272

Short Title: Huntersville Photo Enforcement. (Local)

Sponsors: Senator Odom.

Referred to: Judiciary I.

March 8, 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.

SENATE BILL 272:
Huntersville Photo Enforcement

BILL ANALYSIS

Committee:	Senate Judiciay 1	**Introduced by:**	Senator Odom
Date:	March 16, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: Senate Bill 272 would allow the Town of Huntersville to adopt a local ordinance for the civil enforcement of traffic offenses such as failure to stop at a red light or stop sign through the use of a "traffic control photographic system." A traffic control photographic system is defined in G.S. 160A-300.1(a) as 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.

The owner of a vehicle that is photographed by the traffic control photographic system is subject to a $50 civil penalty, unless the owner furnishes evidence that at the time of the violation, the vehicle was in the care, custody,or control of another person. The violation is not an infraction or criminal offense. There are no motor vehicle points assigned for the violation.

The citations are processed by the municipality and are forwarded to the registered owner by personal service or first class mail. The citation provides the manner in which the citation may be contested. If the owner does not pay the civil penalty or respond to the citation within the time stated on the citation, the owner waives the right to contest responsibility and becomes subject to a civil fine up to $100. The municipality has to establish a nonjudicial administrative hearing to review objections to citations.

The act becomes effective when it becomes law.

CURRENT LAW: Currently, the provision that this bill amends only applies to the City of Charlotte. The City of Charlotte was given the authority to implement the traffic control photographic system in June 1997.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-23-99

S. B. No. 272 AS AMENDED Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) BALLANTINE

1 moves to amend the bill on page 1, line 7

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "CHARLOTTE," AND

4 THE WORDS "THE TOWN OF MATTHEWS," THE

5 WORDS "THE CITY OF WILMINGTON,"

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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. _____ DATE 3-23-99

S. B. No. 272 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) CLODFELTER

1 moves to amend the bill on page 1, line 7

2 ( ) WHICH CHANGES THE TITLE

3 by ~~DELETING THE~~ REDLINING THE WORD "~~CHARLOTTE~~" AND ~~SUBSTITUTING~~ ADDING

4 THE WORDS "CHARLOTTE, THE TOWN OF MATTHEWS,".

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SIGNED Dan Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

SENATE JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, March 24, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **178** Uniform Prudent Investor Act/AB.
Sequential Referral: None
Recommended Referral: None

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

S.B. **272** Huntersville Photo Enforcement
Draft Number: PCS 3653
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment:
1. Amended Short Title also
2. Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

e of Committee J-1 Date 3-23-99

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Ronald C. Suits	UNC Law School, Chapel Hill 27599
Floyd M. Lewis	General Statutes Commission
P. Bay Hall	
Laura Hartsell	NC Bar Association
Ruth Sappie	NCDOT
Garrett Pridgen	ZDR, PA
Lucius Pullen	Attorney
Andy Romanet	N.C.L.M.
K. McBride	NCAA
John McMillan	MFDs
Leonard Allen	SOS
Jack Cozart	PPAB

MINUTES
SENATE JUDICIARY I COMMITTEE
MARCH 25, 1999

The Senate Judiciary I Committee met on March 25, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Albertson to explain **Senate Bill 255 – AN ACT TO CLARIFY THE STATE LAW REQUIRING STATE AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS AND TO REQUIRE STATE AGENCIES TO REPORT ON THEIR COMPLIANCE WITH THAT LAW.**

Senator Albertson moved to adopt a Proposed Committee Substitute for Senate Bill 255 for discussion. The motion carried by a majority voice vote.

Elaine Ferguson, with the Department of Motor Vehicles, played a tape of the new phone system used by that Department. (Written copy attached.)

Senator Soles moved to amend the Proposed Committee Substitute on Page 2, Lines 4-9. (Amendment attached.) The motion carried by a majority voice vote.

Senator Albertson moved to give the Proposed Committee Substitute for Senate Bill 255 a favorable report as amended and have it rolled into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Cochrane was recognized to explain **Senate Bill 34 – AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.**

Because of time constraints, the bill will be heard at a future meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, March 25, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 34	Emergency Shelter/Health Facility Immunity	Cochrane
SB 255	State Agency Telephone Menus	Albertson

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - March 25, 1999

SB 34	Emergency Shelter/Health Facility Immunity	Cochrane
SB 255	State Agency Telephone Menus	Albertson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 255

Short Title: State Agency Telephone Menus. (Public)

Sponsors: Senators Albertson, Martin of Pitt; Allran, Ballance, Carpenter, Carrington, Carter, Cochrane, Cooper, Dalton, Dannelly, East, Forrester, Foxx, Garrou, Garwood, Gulley, Hagan, Harris, Hartsell, Horton, Hoyle, Jordan, Kerr, Kinnaird, Lee, Lucas, Martin of Guilford, Metcalf, Miller, Perdue, Plyler, Purcell, Rand, Rucho, Shaw of Guilford, Warren, Webster, Weinstein, and Wellons.

Referred to: Judiciary I.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATE LAW REQUIRING STATE AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS AND TO REQUIRE STATE AGENCIES TO REPORT ON THEIR COMPLIANCE WITH THAT LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-351 reads as rewritten:

"Section 2. State agency telephone systems routing calls to multiple extensions shall be reprogrammed by September 1, 1997, to minimize the number of menus that a caller must go through to reach the desired extension, and to allow the caller to reach an attendant or operator from the first menu when calling during normal business hours. As used in this section, the term "menu" refers to the first point in the call at which the caller is asked to choose from two or more options, regardless of whether that choice is referred to as a menu, router, or other term within the telephone industry itself.

This act shall be implemented by State agencies with existing personnel at no additional cost to the State."

Section 2. Each State agency shall report in writing to the General Assembly by April 1, 1999, on that agency's compliance with the provisions of S.L. 1997-351, as amended by Section 1 of this act. Each report shall be submitted to the

President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House appropriations subcommittees by which that agency's budget request is considered. The report shall state whether that agency's telephone system is in compliance with the provisions of S.L. 1997-351 and, if not, shall state any reasons for that noncompliance. The reports shall also provide information on the volume of calls received by that agency and the number of attendants or operators available to take those calls.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S255-PCSSE-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 255
THIS IS A DRAFT 24-MAR-99 17:17:30
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Agency Telephone Menus. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATE LAW REQUIRING STATE AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS AND TO REQUIRE STATE AGENCIES TO REPORT ON THEIR COMPLIANCE WITH THAT LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-351 reads as rewritten:

"Section 2. State agency telephone systems routing calls to multiple extensions shall be reprogrammed by September 1, 1997, to minimize the number of menus that a caller must go through to reach the desired extension, and to allow the caller to reach an attendant or operator after accessing not more than two menus during normal business hours. As used in this section, the term "menu" refers to the first point in the call at which the caller is asked to choose from two or more options, regardless of whether that choice is referred to as a menu, router, or other term within the telephone industry itself.

This act shall be implemented by State agencies with existing personnel at no additional cost to the State."

Section 2. Each State agency shall report in writing to the General Assembly by May 1, 1999, on that agency's compliance with the provisions of S.L. 1997-351, as amended by Section 1 of this act. Each report shall be submitted to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House appropriations subcommittees by which that agency's budget request is considered. The report shall state whether that agency's telephone system is in compliance with the provisions of S.L. 1997-351 and, if not, shall state any reasons for that noncompliance. The reports shall also provide information on the volume of calls received by that agency and the number of attendants or operators available to take those calls.

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

SENATE BILL 255:
State Agency Telephone Menus

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senators Albertson and Martin of Pitt
Date:	March 25, 1999		
Version:	S255-PCSSE-002	**Summary by:**	Jo B. McCants Committee Co-Counsel

SUMMARY: ***This bill requires State agencies to have a telephone system that allows a caller to reach an attendant or operator after accessing not more than two menus when the person is calling the agency during normal business hours. The bill also defines "menu" and makes it clear that the term "menu" means the first point in the call at which a caller is asked to choose from two or more options.***

The bill requires all state agencies to make a report in writing to the General Assembly by May 1, 1999. The report must state whether the agency is in compliance with this act, the number of calls received by the agency, and the number of attendants or operators available to answer telephone calls. If the agency is not in compliance, the report must state the reasons for noncompliance.

The act becomes effective when it becomes law.

CURRENT LAW: The telephone systems of all State agencies are currently required to be programmed to minimize the number of menus that a caller must go through to reach a desired extension. The caller must be given an option of speaking with an attendant or operator from the first menu, if the person is calling during normal working hours. The current law does not define the term "menu."

BACKGROUND: Although all State agencies were required to reprogram their telephone systems by September 1, 1997, there was apparently some misunderstanding concerning what the General Assembly meant by the term "menu." There are some agencies that have not met the legislative intent of the current law because these agencies do not consider "routers" to be the same as a menu. Routers are used to send or route a call to a particular menu. Therefore, a person could go through several routers before reaching a menu that would allow a caller to speak with an attendant or operator.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-25-99

S. B. No. 255 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Soles

moves to amend the bill on page 2, lines 4 through 9

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read,

"this act, Each report shall be submitted to the Joint Legislative Commission on Governmental Operations. The report shall state whether that".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NOW

CURRENT VRU MENU SCRIPT

(Introduction)
Thank you for calling the North Carolina Division of Motor Vehicles. If you are calling from a touch tone phone, please press 1 now. Otherwise, please remain on the line for our speech recognition service. (**NOTE:** This portion must remain to service rotary dial phone customers)
At any time you can press 8 to go back to the previous menu or *9 to end the call.

1st menu

If you would like information pertaining to driver licenses, press 1
If you would like information about titles, license plates or tags, stickers, registration cards or liability insurance, press 2.

2nd menu

1. You have reached the Driver License Menu. For branch locations, press 1. For Driver License Main Menu, press 2. **To speak with a customer service representative, press 0.**

   DL Main menu. . . .

2. You have reached the Vehicle Registration Menu. Our main office address is 1100 New Bern Avenue, Raleigh, NC 27697. For liability insurance main menu, press 1. For vehicle registration main menu, press 2. **To speak with a customer service representative, press 0.**

   VR Main menu. . . .

PROPOSED

MENU CHANGES TO COMPLY WITH SB 255

(NOTE: These changes can be made in 30 days)

(Introduction)
Thank you for calling the North Carolina Division of Motor Vehicles. If you are calling from a touch tone phone, please press 1 now. Otherwise, please remain on the line for our speech recognition service.
At any time you can press 8 to go back to the previous menu or *9 to end the call.

1st menu

If you would like information pertaining to driver licenses, press 1
If you would like information about titles, license plates or tags, stickers, registration cards or liability insurance, press 2.

1st menu 1st "0" option *

1. You have reached the Driver License Menu. **To speak with a customer service representative, press 0.** For branch locations, press 1. For Driver License Main Menu, press 2.

   DL Main menu, . . .

2. You have reached the Vehicle Registration Menu. Our main office address is 1100 New Bern Avenue, Raleigh, NC 27697. **To speak with a customer service representative, press 0.** For liability insurance main menu, press 1. For vehicle registration main menu, press 2.

   VR Main menu. . . .

* This will allow customer to be IN correct section to solve issue.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, March 29, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **255** State Agency Telephone Menus

Draft Number:	PCS 1620
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 34*

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

Sponsors: Senators Cochrane, Carpenter, Dannelly, Martin of Pitt, Purcell; and Perdue.

Referred to: Judiciary I.

February 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

(e) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

(e) As used in this section:

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

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

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

SENATE BILL 34:
Emergency Shelter/Health Facility Immunity

BILL ANALYSIS

Committee: Senate Judiciary I
Date: March 25, 1999
Version: First Edition

Introduced by: Sen. Cochrane
Summary by: O. Walker Reagan
Committee Co-Counsel

SUMMARY: ***Senate Bill 34 provides immunity from liability for health care facilities, home care agencies, and adult care homes, (hereafter referred to as facility) when care is rendered or shelter given to handicapped persons during a declaration of disaster or emergency, whether or not the facility is compensated. The bill also provides for a waiver of rules in order to permit emergency services to be rendered. The bill is a recommendation of the NC Study Commission on Aging.***

CURRENT LAW: G.S. 166A-15 grants general immunity to any person whose property is used to shelter, protect, safeguard, or aid another person in an emergency situation, but this immunity does not necessarily apply to services provided in connection with the use of the property for emergency purposes. (A copy of G.S. 166A-15 is attached.) Current law does not provide any specific immunity for health care facilities, home care agencies, or adult care homes when providing shelter or rendering services during declared emergencies. Current law also does not allow a health care facility, home care agency, or adult care home to operate outside of the rules of the NC Medical Care Commission even under emergency situations.

BILL ANALYSIS: Senate Bill 34 provides health care facilities, home care agencies, and adult care homes, that provide temporary shelter or services to handicapped individuals during declared disasters at the request of an emergency management agency, with immunity for damages caused by the facility's acts or omissions in providing shelter or services.

Section 1 provides immunity for health care facilities and home care agencies as defined in G.S. 131E-154.2(3). Section 2 provides immunity for adult care homes as defined in G.S. 131E-136(2). The immunity applies to personal injury, wrongful death, property damage, or other loss, whether the facility was compensated or not. In order to qualify for the immunity, the services must be rendered at the request of an emergency management agency implementing an approved emergency plan; the facility must be licensed to provide such care in the ordinary course of business; care must be provided in accordance with an agreement between the providing facility and the emergency management agency; and the care must be provided within 45 days of the emergency declaration unless the declaration is extended. The immunity does not apply if the damage was caused by gross negligence, wanton conduct, or intentional wrongdoing. The rules of the NC Medical Care Commission, which is charged with regulating these facilities, are waived to the extent necessary to allow the facility to provide the temporary shelter or services, unless the Division of Facility Services determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any person in the facility.

EFFECTIVE DATE: The bill would become effective July 1, 1999 and would apply to shelter and services provided on or after that date.

§ 166A-15. No private liability.

Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes.

(1957, c. 950, s. 3; 1977, c. 848, s. 2.)

VISITOR REGISTRATION SHEET

Name of Committee Judiciary I

Date 3-25-99

May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
TATIA VAN NOTE	NCASA CONFERENCE
NANCY STEPINA	NCASA CONFERENCE
Allison Flerl	NC AOC
Cam Cover	
Dianne Bosley	Forestry ENR
Laura DeNiro	DENR
Stuart Thompson	Hickory City Schools
DUANE KIRKMAN	HICKORY CITY SCHOOLS

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 1, 1999

The Senate Judiciary I Committee met on April 1, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Hurley to explain **House Bill 50 - AN ACT TO AUTHORIZE THE CITY OF FAYETTEVILLE TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.**

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

Senator Dannelly was recognized to explain **Senate Bill 563 - AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS TO ESTABLISH SCHOOL ZONE SPEED LIMIT VIOLATIONS AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.**

Jo McCants, Assistant Committee Counsel, was recognized to answer questions from the Committee.

After discussion by the Committee, Senator Cooper asked that members submit their changes to Committee Counsel and to bring the bill back before the Committee as a Proposed Committee Substitute at a future meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, April 1, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 563	Charlotte School Zone Speed Cameras	Dannelly
SB 601	Doc Prisoners' Uniforms	Rand
HB 50	Fayetteville Traffic Violations	Hurley

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 1, 1999

SB 563	Charlotte School Zone Speed Cameras	Dannelly
SB 601	Doc Prisoners' Uniforms	Rand
HB 50	Fayetteville Traffic Violations	Hurley

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
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, April 05, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **50** Fayetteville Traffic Violations
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 563*

Short Title: Charlotte School Zone Speed Cameras. (Public)

Sponsors: Senators Dannelly; Albertson, Allran, Ballance, Clodfelter, Cooper, Hartsell, Horton, Hoyle, Kerr, Lucas, Martin of Guilford, Odom, Phillips, and Rucho.

Referred to: Judiciary I.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS TO ESTABLISH SCHOOL ZONE SPEED LIMIT VIOLATIONS AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

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-300.2. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring instrument or system which works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141.1 and G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141.1 detected by a

photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless within 21 days after the citation is issued, the owner notifies the officials or agents of the municipality that issued the citation of an intent to transfer responsibility to the person who had care, custody, and control of the vehicle at the time of the violation and it is admitted by the person identified that he or she had care, custody, and control of the vehicle at the time of the violation. The notification shall include:

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

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen.

Upon receiving a notification of intent to transfer responsibility, the officials or agents of the municipality may reissue the citation to the person identified by the owner having care, custody, and control of the vehicle at the time of the violation.

(2) A violation detected by a photographic speed-measuring 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. 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 an additional civil penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision."

Section 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.2(a) shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(c)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provision of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless it is found that:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) and the Secretary of Crime Control and Public Safety (hereinafter referred to as Secretary) pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the Commission and Secretary for that particular system.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the Commission and Secretary. A written certificate by a technician certified by the Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(c)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(c)(4) where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of such system."

Section 3. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.2(a) and establish the standards for calibration and testing for accuracy of each approved system."

Section 4. Section 1 of this act applies to the City of Charlotte only.

Section 5. This act is effective when it becomes law.

SENATE BILL 563:
Charlotte School Zone Speed Cameras

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Dannelly
Date:	April 1, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: Senate Bill 563 would allow the City of Charlotte to adopt a local ordinance for the civil enforcement of speeding in a school zone. The City of Charlotte would utilize a photographic speed-measuring system to detect persons speeding in a school zone.

BILL ANALYSIS:

Section 1. Section 1 defines a photographic speed-measuring system as a speed-measuring instrument or system that works in conjunction with a photographic video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles exceeding the speed limit.

The owner of a vehicle that is photographed by the speed-measuring system is subject to a $50 civil penalty, unless the owner "transfers responsibility" to the person who had care, custody, and control of vehicle at the time of the violation **and** the person identified admits that he or she had care, custody, and control of the vehicle at the time of the violation. A violation of the ordinance is not an infraction or misdemeanor. There are no motor vehicle points assigned for the violation.

The citations are processed by the municipality and are forwarded to the registered owner by personal service or first class mail. The citation provides the manner in which the citation may be contested. If the owner does not pay the civil penalty or respond to the citation within the time stated on the citation, the owner waives the right to contest responsibility and becomes subject to a civil fine up to $50. The municipality has to establish a nonjudicial administrative hearing to review objections to citations. The administrative hearing decision may be reviewed by the superior court, if a petition is filed with the clerk of superior court within 30 days of the hearing.

Section 2. Section 2 provides that the results of the photographic speed-measuring system is admissible evidence for the nonjudicial administrative hearing if:

1) the system has been approved by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety, **and**

2) the system has been calibrated and tested in accordance with the standards established by the Commission and Secretary.

Section 3. Section 3 gives the North Carolina Criminal Justice Education and Training Standards Commission the power to approve the use of specific speed-measuring systems and establish the standards for calibration and testing for the accuracy of the systems.

Section 4. This bill applies only to the City of Charlotte.

Section 5. The act becomes effective when it becomes law.

§ 20-141.1. Speed limits in school zones.

The Board of Transportation or local authorities within their respective jurisdictions may, by ordinance, set speed limits lower than those designated in G.S. 20-141 for areas adjacent to or near a public, private or parochial school. Limits set pursuant to this section shall become effective when signs are erected giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective, or by erecting signs giving notice of the school zone, the authorized speed limit and which indicate the days and hours the lower limit is effective by an electronic flasher operated with a time clock. Limits set pursuant to this section may be enforced only on days when school is in session, and no speed limit below 20 miles per hour may be set under the authority of this section. A person who drives a motor vehicle in a school zone at a speed greater than the speed limit set and posted under this section is responsible for an infraction and is required to pay a penalty of not less than twenty-five dollars ($25.00).

§ 20-176. Penalty for misdemeanor or infraction.

(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction unless the violation is specifically declared by law to be a misdemeanor or felony. Violation of the remaining Parts of this Article is a misdemeanor unless the violation is specifically declared by law to be an infraction or a felony.
(b) Unless a specific penalty is otherwise provided by law, a person found responsible for an infraction contained in this Article may be ordered to pay a penalty of not more than one hundred dollars ($100.00).
(c) Unless a specific penalty is otherwise provided by law, a person convicted of a misdemeanor contained in this Article is guilty of a Class 2 misdemeanor. A punishment is specific for purposes of this subsection if it contains a quantitative limit on the term of imprisonment or the amount of fine a judge can impose.
(c1) Notwithstanding any other provision of law, no person convicted of a misdemeanor for the violation of any provision of this Chapter except G.S. 20-28(a) and (b), G.S. 20-141(j), G.S. 20-141.3(b) and (c), G.S. 20-141.4, or a second or subsequent conviction of G.S. 20-138.1 shall be imprisoned in the State prison system unless the person previously has been imprisoned in a local confinement facility, as defined by G.S. 153A-217(5), for a violation of this Chapter.
(d) For purposes of determining whether a violation of an offense contained in this Chapter constitutes negligence per se, crimes and infractions shall be treated identically.

VISITOR REGISTRATION SHEET

e of Committee J-1 Date 4-1-99

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
Tom Morrow	Sprint
Bryan Beatty	DOJ
[illegible]	NCDOT
Mary Carmichael	Mecklenburg County
Walter Price	Charlotte Chamber
Brenda Dougherty	Sprint
Kristin David	Legislative Intern
Leslie DeJoaquin	NCCBT
Scott Hammack	NCATL

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 6, 1999

The Senate Judiciary I Committee met on April 6, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Soles, Acting Chairman, recognized Senator Cooper to explain **Senate Bill 746 – AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.**

Thomas H. Countee, Jr., Executive Director of the National Spinal Cord Injury Association, Silver Springs, Maryland and Alan Hirsch, Consumer Protection Division of the N. C. Attorney General's office, were recognized to speak on the bill.

Senator Cooper will bring the bill back to Committee for further discussion at the next meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, April 6, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 746 Structured Settlement Protection Act

Senator Cooper, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE DRS3558-LB059(2.19)

Short Title: Structured Settlement Protection Act. (Public)

Sponsors: Senator Cooper.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"**§ 1-543.10. Title.**

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"**§ 1-543.11. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;
b. The aggregate amount of such payments;
c. The discounted present value of such payments, together with the discount rate used in determining such discounted present value;
d. The gross amount payable to the payee in exchange for such payments;
e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in sub-subdivision e. of this paragraph;
g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and
h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both, to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be

required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties; and

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority; and

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed eighteen percent (18%).

"**§ 1-543.12. Definitions.**

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitely establishes that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service; or

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"**§ 1-543.13. Jurisdiction.**

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"**§ 1-543.14. Procedure for approval of transfers.**

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties, and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enfore this Article. In addition, the payee shall be entitled to reinstatement of all structured settlement payment rights lost as a result of violation of this Article by any transferee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, but nothing contained in this act shall imply that any transfer under a transfer agreement reached prior to such date is effective.

SENATE BILL 746:
Structured Settlement Protection Act

BILL ANALYSIS

Committee: Senate Judiciary I
Date: April 6, 1999
Version: First Edition

Introduced by: Sen. Cooper
Summary by: O. Walker Reagan, Committee Co-Counsel

SUMMARY: ***Senate Bill 746 would enact the Structured Settlement Protection Act to establish certain minimal requirements for the transfers or assignment of structured settlement rights to be considered valid and enforceable.***

CURRENT LAW: There is no specific statutory law in North Carolina which governs the transfer or assignment of structured settlement proceeds to other third parties. Structured settlement agreements are either contracts between two parties or agreements of the parties recognized by the court and enforced by order of the court as a consent agreement. Assignment of those rights would typically be as a matter of contract.

BILL ANALYSIS: Senate Bill 746 would require that an agreement transferring or assigning the rights to receive structured settlement proceeds in the future must be approved by the court or administrative agency authorized to approve the settlement and must meet minimal disclosure requirements as to the effect and costs of the assignment.

Section 1 of the bill creates a new Article 44B in Chapter 1 to be known as the NC Structured Settlement Protection Act. All references are to G.S. 1-543.__.

Section .11 sets out the requirements that must be satisfied before a transfer of structured settlement rights is effective. This section requires that the transfer be approved in advance by the court or responsible administrative authority based upon a judicial or administrative finding that:

1. The transfer complies with the law.
2. The person assigning their rights in the settlement payments (the "payee") has received the statutory disclosures of the costs and effects of the transfer to the person receiving the rights to future payments (the "transferee").
3. The transferee has established that the transfer is necessary for the to avoid an imminent financial hardship and would not subject the payee or the payee's dependents to future financial hardship.
4. The payee has received independent professional advice on the effects of the transfer.
5. If the transfer is contrary to the terms of the structured settlement, all the parties to the settlement and the court that originally approved the settlement have approved the transfer.
6. The transferee has given all relevant tax payer identification information to the person paying the settlement.

7. The discount rate for determining the present value of the payment rights does not exceed 18%.

Section .12 sets out the definitions used in the law including definitions for "dependents", "federal hardship standard", "independent professional advice", and "responsible administrative authority".

Section .13 establishes the court or authority that has jurisdiction to approve these transfers.

Section .14 sets out the procedures for seeking prior approval of a proposed settlement rights transfer. This includes requiring that all relevant documents (specified in the bill) be given at least 30 days prior to a hearing on the proposed transfer approval to the court, all interested parties (defined) and the Attorney General. The Attorney General is authorized to appear and be heard on any application for authorization to transfer structured settlement payments.

Section .15 provides that the provisions of this law may not be waived. It also provides for penalties to any transferee that receives payments under a structured settlement assigned to the transferee in violation of this statute, but this section also protects the payee from any losses arising from an invalid transfer.

Section .16 makes it clear that this act does not affect any other laws that might apply to or affect the transfer of structured settlement rights.

Section 2 of the bill adds a new section to the Special Proceedings statutes to provide that applications for the approval of transfer of structured settlement rights is a special proceeding and is to be heard in Superior Court.

Section 3 makes the bill effective October 1, 1999 and applicable to transfers of rights under transfer agreements entered into on or after that date, but the bill does not imply that any transfer under a transfer agreement reached prior to that date is effective.

S746-SMRU-001

National Spinal Cord Injury Association

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STATEMENT

TESTIMONY BY THOMAS H. COUNTEE, JR., ESQ., EXECUTIVE DIRECTOR, THE NATIONAL SPINAL CORD INJURY ASSOCIATION, BEFORE SENATE JUDICIARY COMMITTEE, NORTH CAROLINA STATE LEGISLATURE, TUESDAY, APRIL 6, 1999

Good morning, Chairman Cooper and other Senators.

My name is Thomas H. Countee, Jr., Executive Director of The National Spinal Cord Injury Association (NSCIA), a national non-profit organization, headquartered in Silver Spring, Maryland. NSCIA's North Carolina Chapter is in Winterville. The Association's President is Jack Dahlberg, who is a quadriplegic.

On a personal note, I have close family connections to North Carolina: my maternal forbears lived in Henderson, North Carolina. My parents met and were married in Winston-Salem and I spent a portion of each early childhood summer in that city. Later in my life, my daughter and I summered in Kill Devil Hills on the Outer Banks and I still enjoy deep sea fishing out of Hatteras. I also own property in Charlotte. Forty-one years ago in 1958, I sustained a diving accident on the Chesapeake Bay, rendering me a quadriplegic. I am an attorney and I served 15 months as Legislative Counsel in the Ford White House. It is a pleasure and honor to come to North Carolina to testify on S. .

Today, I represent over 5,000 members of the National Spinal Cord Injury Association and thousands of other spinal cord injured persons, many of whom benefit from structured settlements, including several hundred in North Carolina. The National Spinal Cord Injury Association has no business or tax effect stake in the outcome of this proposed legislation, S. . However, the Association is deeply interested in the health, safety and welfare of persons with catastrophic, traumatic and/or debilitating injuries, many of whom are Association members and receive structured settlements.

NSCIA is deeply troubled at the emergence of factoring companies that convince injury victims, including persons with disabilities, to sell structured settlement payments for a deeply discounted cash lump sum. Such transactions completely undermine the long-term financial security of a structured settlement and threaten the very livelihood of an otherwise extremely vulnerable population - those of us with disabilities. And the steep financial discounts that disabled Americans often are persuaded to accept would be unacceptable to any fair-minded person.

Factoring companies increasingly prey upon the weakest, most gullible and most vulnerable in our society. I assume many of you have seen the television ads soliciting calls from those who have recently suffered severe injuries. We believe that at present, the emerging "gray market" of factoring companies is largely unregulated, unresponsive to the needs and best interests of recipients of structured settlements and unconscionable in their [illegible], high pressure marketing practices and unethical legal maneuvers and strategems such as the use of a confessed judgment against the victim in a distant court to garnish the victim's payments.

One last point, Mr. Chairman, I have come here to let you see the type of catastrophic injury affected by this and to put a human face on this legislation, not as the beneficiary of a structured settlement, but as a leader of, and advocate for, severely disabled persons who have. In 1982, the intent of Congress, the social purpose if you will, was to encourage those who receive monetary settlements growing out of catastrophic injuries, to accept periodic payments to safeguard the uncertain futures they face. Factoring companies' intent, on the other hand, is simply to cheat severely injured persons out of their money. S. does nothing to help those who have already been taken advantage of; we need this legislation to guide those who may be taken advantage of in the future. You can, and should, stop this outrage. Sound public policy and simple decency would indicate that as legislators, you have no choice but to do the right thing.

For all these reasons, The National Spinal Cord Injury Association respectfully recommends and strongly urges your support of S. , The North Carolina Structural Settlement Act, which would provide needed protection from the predatory practices of these factoring companies.

Thank you for the time and attention you are devoting to this critical issue and the opportunity to appear before you. I will be happy to answer any questions you may have about the Association or our interest in this matter.

News You Can Use

Settling for less

Should accident victims sell their monthly payouts?

BY MARGARET MANNIX

Orion Olson has had his share of hard knocks. When he was 3 years old, a dog bite caused him vision and neurological problems, as well as injuries requiring plastic surgery. In his teens, he dropped out of high school and wound up homeless. But he had hope. On his 18th birthday, the Minneapolis man was to start receiving the first of five periodic payments totaling $75,000 from a lawsuit stemming from the dog attack. He received the first installment of $7,500, but the money didn't last long.

So when Olson saw a television ad for a finance company named J. G. Wentworth & Co. that provided cash to accident victims, he saw a way to get his life back on track. He agreed to sell his remaining future payments of $67,500 to Wentworth for a lump sum of $16,100. "I needed money," says Olson, now 20 years old. "If I could get the money out like they were saying on TV, I wouldn't have to worry about being on the street anymore." Within six months, however, Olson had spent all the money and was living in a car. He now wishes he had waited for his regular payments.

Olson may be financially unsophisticated, but he is also caught up in a burgeoning, and unregulated, new industry that specializes in converting periodic payments into fast cash. Also known as factoring companies, these firms can be a godsend to accident victims, lottery winners, and others who have guaranteed future incomes but need immediate funds. But like a modern-day Esau trading his inheritance for a bowl of soup, the unwary consumer may be selling future sustenance for cheap. A growing number of federal and state legislators, as well as several attorneys general, contend that factoring companies charge usurious interest rates, fail to properly disclose terms, and take advantage of desperate people. "It's unconscionable," says Minnesota Attorney General Mike Hatch. "They are really preying upon the vulnerable."

JERRY MAGEE Mississippi accident victim sold his payments for quick cash. Today he has only regrets.

PHOTOGRAPHY BY THOMAS W. BROENING FOR *USN&WR*

Frittering away. Critics further allege that factoring companies undermine the very law that Congress passed to help beneficiaries of large damage awards. In 1982, seeking to prevent accident victims from frittering away large sums intended to provide for them over their lifetimes, Congress instituted tax breaks for those who agreed to receive their money over a period of years. But now, contends Montana Sen. Max Baucus, a sponsor of that legislation, the careful planning that goes into the structuring of these payments "can be unraveled in an instant by a factoring company offering quick cash at a steep discount."

A number of advanced-funding companies compete for their share of future payments that include more than $5 billion in structured settlements awarded each year. The largest buyer is Wentworth, handling an estimated half of all such transactions. Based in Philadelphia, the firm began by financing nursing homes and long-term-care facilities. In 1992 it started buying

CHRISTOPHER HICKS **Wentworth sued the Oklahoma man for the entire amount of his payments. "They make you think you are doing the right thing . . ., but you are really messing up your life."**

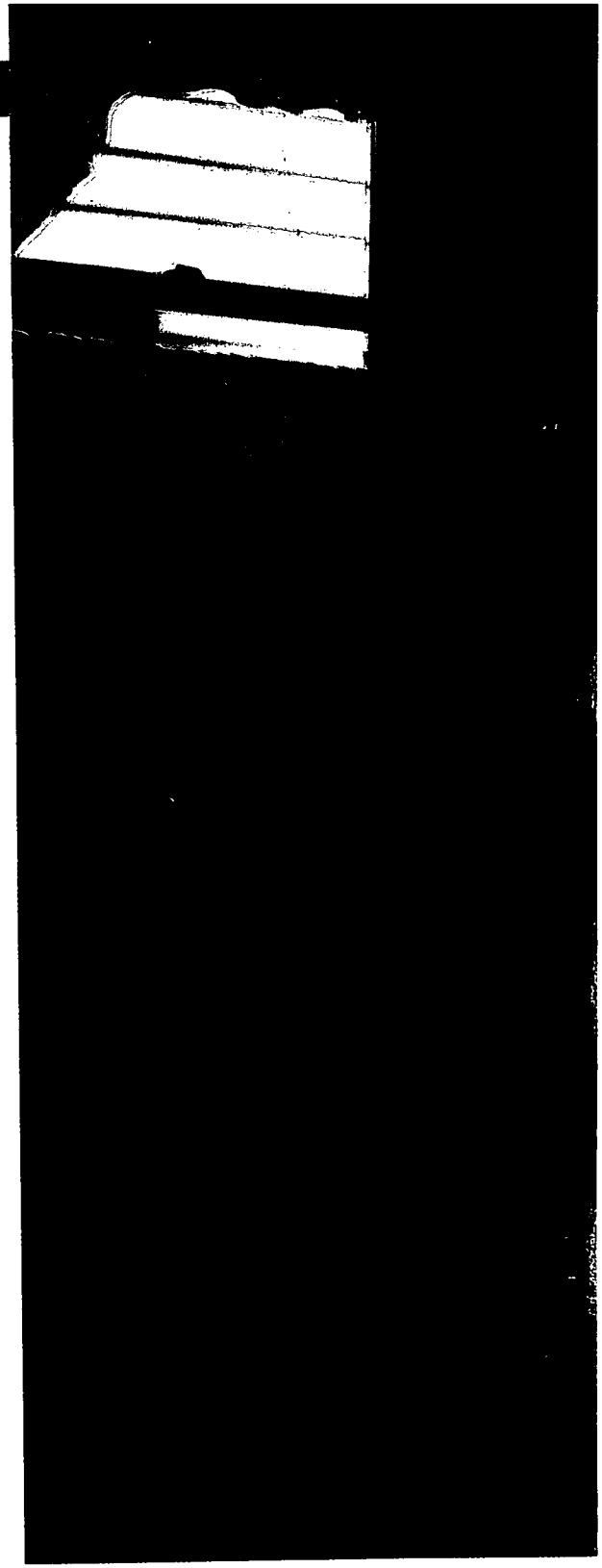
settlements that auto-accident victims were owed by the state of New Jersey. Since then, Wentworth has completed more than 15,000 structured-settlement transactions with an approximate total value of $370 million.

The deals work like this: A structured-settlement recipient who wants to sell, say, $50,000 in future payments, will not get a lump sum of $50,000. That's because, as a result of inflation, money scheduled to be paid years from now is worth less today. Formulas based on such factors as inflation and the date that payments begin are used to determine the "present value" of the future payments. The seller is, in essence, borrowing a lump sum that is paid back with the insurance company payments. The interest on the borrowed sum is called the "discount rate."

Wentworth and other advanced-funding companies say they are providing a valuable service because structured settlements have a basic flaw: They are not flexible. Consumer needs change, they note, and a fixed monthly payment does not. Wentworth points to an Ohio woman who sold the company a $500 portion of her monthly payments for six years when her bills were piling up and her home mortgage was about to be foreclosed. She re-

ceived instant cash of $21,000, at a discount rate of 15.8 percent. The customer, who did not wish to be identified, says she is grateful to Wentworth for advancing her the money when her insurance company would not. "The insurance companies just don't understand," she says. "When I needed their help, they were not there." Likewise, a New York quadriplegic, who also did not want to be named, says he secured funds from Wentworth at a 12 percent discount rate to expand his own business and, as a result, is more successful than ever. "It was definitely worth it for me," he says.

But other customers are not as satisfied. New York City resident Raymond White lost part of one leg when he was struck by a subway train in 1990. A lawsuit led to a settlement that guaranteed White a monthly payment of $1,100, with annual cost-of-living increases of 3 percent. In 1996, White, who did not have a job, wanted cash to buy a car and pay medical bills. So he turned to Wentworth, selling portions of his monthly payments for the next 15 years in six different transactions.



RAYMOND WHITE After losing a leg in a subway accident, the New Yorker was guaranteed $1,100 every month. He gave up future payments totaling $198,000 in exchange for $54,000.

Altogether White gave up future payments totaling $198,000. He received a total of $54,000 in return, but the money, which he used for living expenses, is now gone. He bought a car, but it has been repossessed. He bought a plot of land in Florida, but lost it to foreclosure. With debts mounting, he now relies partially on public assistance to get by. "Unfortunately I was so overwhelmed with debt and striving for a better life that I went along with it," says White. "In reality, what I was doing was accumulating more debt for myself."

Some Wentworth customers say they might have realized the repercussions of their transactions had the contracts been clearer about the long-term costs. Jerry Magee of Magnolia, Miss., who has filed a class action suit against the company, is one of them. In a mortgage contract, for instance, lending laws require that consumers see their interest rate and the total amount of money they will be paying over the life of the loan. By contrast, Magee's lawyer says, neither the effective interest rate nor the total amount of the transaction was clearly spelled out in the 13-page contract or in the 25 other documents Wentworth required him to sign. Wentworth says it has been revising its documents to make them easier to understand.

Change of address. While the factoring transaction itself is complex, the transfer of payments is simple. The structured settlement recipient instructs the insurance company to change his or her address to that of the factoring company. The check remains in the recipient's name, and the factoring company uses a power of attorney, granted by the recipient, to cash it.

This roundabout method is used because insurance companies say structured payments should not be sold. Most settlement contracts specify that payments cannot be "assigned," and the Internal Revenue Service says that payments "cannot be "accelerated, deferred, increased or decreased." Selling payments, the insurance companies say, amounts to accelerating them. And that may threaten the claimant's tax break. Insurance companies say that if their annuitants start selling their payments, the social good that justifies the tax break disappears. Ironically, they make this argument even though some insurance companies themselves are now making counteroffers to factoring companies, accelerating payments to their own claimants. Berkshire Hathaway Life Insurance Co., for example, recently offered a claimant a lump sum of $59,000, beating Wentworth's offer of $45,000. The IRS has not formally addressed the tax issues, but the U.S. Department of the Treasury has recommended a tax on factoring transactions to discourage them.

Insurance companies also worry about having to pay twice. Last year, a judge ruled an insurance company was obligated to pay a workers' compensation recipient his monthly payments because the factoring transaction he entered into was invalid under Florida's workers' compensation statute. For their part, the factoring companies argue that even though the claimants do not own the annuities—

JONATHAN SAUNDERS FOR *USN&WR*

the insurance companies do—the factoring companies can buy the "right to receive" the payments.

Insurance companies are getting wise to these factoring deals—CNA, a Chicago-based insurer, noticed that annuitants from all over the country were changing their addresses to Wentworth's Philadelphia post office box—and some are trying to stop the transactions. Some insurance companies, for example, refuse to honor change-of-address requests or redirect the payments back to the annuitant after the deal is done. But redirecting a payment can cause serious consequences for the claimant. In Wentworth's case, the company has each customer sign a clause called a "confession of judgment," which allows the factoring company to sue customers quickly for default when their payments are not received; customers also waive the right to defend themselves.

Christopher Hicks, a 20-year-old accident victim from Oklahoma City, learned the effects of that clause the hard way. In 1997, Hicks signed over to Wentworth half of his $2,000 monthly payments for the next 32 months and $1,500 for the 26 months after that. In exchange, Hicks received $37,500, which he admits he quickly spent on furniture, clothes, and other items. When Wentworth failed to receive a check from the insurance company that pays Hicks the annuity, it secured a judgment against him for the *entire* amount of the deal—$71,000.

No clue. To collect, Wentworth garnisheed Metropolitan Life, meaning that Metropolitan Life was supposed to start sending Hicks's monthly checks to Wentworth. It did not—the company won't say why—and Hicks, who was supposed to be getting $1,000 back from Wentworth, was left with nothing. "When the money stopped, I had no clue what was going on," says Hicks, who had to rely on family and friends until the two companies settled their differences in court. Hicks now wishes he had never gotten involved with Wentworth. "They make you think you are doing the right thing in the long run," says Hicks, "but you are really messing up your life."

Wentworth makes liberal use of confession-of-judgment clauses even though they are illegal in consumer transactions in the company's home state of Pennsylvania. The Federal Trade Commission also bans the clauses as an unfair practice in consumer-credit transactions. The clauses *are* allowable in business transactions in Pennsylvania if they are accompanied by a statement of business purpose. So in each case Wentworth certifies that the agreements "were not entered into for family, personal, or household purposes."

Such language is used in affidavits despite cases like that of Davinia Willis, a 24-year-old resident of Richmond, Calif., who entered into a transaction with Wentworth in 1996 to stop her house from being foreclosed upon and to repair wheelchair ramps—clearly, she says, personal uses. In a class action lawsuit against the company, she cites the confession of judgment as one reason why the contract is "illegal, usurious, and unconscionable." Wentworth says the clauses are necessary to keep its customers from reneging on their agreements.

In the end, the controversy over factoring companies comes down to a funda-

mental disagreement over the definition of their business. The factoring companies say they are not subject to usury or consumer-credit disclosure laws because they are not, in fact, lenders. "We don't make loans," declares Andrew Hillman, Wentworth's general counsel. "We buy assets." But some state attorneys general say these transactions differ very little, if at all, from loans and perhaps should be classified as such. That way, says Shirley Sarna, chief of the New York attorney general's consumer fraud and protection bureau, the law could prevent factoring companies from charging discount rates that she says in some cases have exceeded 75 percent. Wentworth says its average rate is 16 percent, and several factoring companies insist their rates would be much lower if insurance companies did not make it expensive for them to complete the deals. "By getting the insurance companies to process the address changes, it would overnight transform our discount rates from high teens to the single digits," says Jeffrey Grieco, managing director of Stone Street Capital, an advanced-funding firm in Bethesda, Md.

Who is right and who is wrong is being hammered out in courtrooms and statehouses across the country. The insurance companies were heartened last summer when a Kentucky judge denied four of Wentworth's garnishment actions, saying the purchase agreements the customers signed were neither valid nor legal. But other courts have ruled differently.

DAVINIA WILLIS California woman sold her payments to prevent a home foreclosure. She is suing Wentworth claiming "illegal and usurious" terms.

In Illinois, a new state law says that structured settlements can be sold as long as a judge approves the transaction. Wentworth notes that more than 100 such sales have been approved. At the same time, several state attorneys general are examining the factoring industry's practices. "You have got to worry about people who have a debilitating injury," says Joseph Goldberg, senior deputy attorney general for Pennsylvania. "The injury is never going away and they have no real means of income and probably no means of employment.... If they give that monthly payment up, it could have serious consequences." Voicing similar concerns, disability groups like the National Spinal Cord Injury Association, which now refuses to accept factoring companies' advertisements in its magazine, are warning members about the hazards of cashing out. The association is "deeply concerned about the emergence of companies that purchase payments intended for disabled persons at a drastic discount," says its executive director, Thomas Countee.

While opinions are divided about the validity of factoring transactions, both sides agree that regulation of the secondary market is necessary. As in Illinois, Connecticut and Kentucky have passed laws requiring a judge's approval of advanced-funding deals, as well as fuller disclosure of costs. Faced with mounting criticism, Wentworth this week will announce its pledge to submit every request for purchase of a settlement to a court for approval. Other states are expected to address the issue this year, and in Congress, Rep. Clay Shaw, a Florida Republican, has reintroduced a measure that would tax factoring transactions.

The factoring companies respond to all these efforts by also calling for better disclosure from the primary market—the insurance companies, attorneys, and brokers that set up the structured settlements in the first place. Factoring companies argue that structured settlements are not always as generous as they are represented to be. "We challenge insurance companies and their brokers to take the same pledge," said Michael Goodman, Wentworth's executive vice president.

Whatever the outcome of the debate, consumers thinking about selling their future payments are well advised to take a hard look at what they are getting into. ■

VISITOR REGISTRATION SHEET

[redacted] of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Dave Hunn	Smith Anderson
Robert Pasha	Young, Moore & Henderson
Bob Paul	American Council of Life Insurance
Daphne Copeland Beatty	JE Financial Assurance
David Lawson	Hunton & Williams
Susan Valenni	Nationwide
Alan Miles	Bonsky & Dixon LLP
RAY FARMER	AMERICAN INSURANCE ASSOCIATION
[redacted] SANDS	WCSR
Charles Cramer	NCATL
Judy Sayler	WRA
Ellen Kirsch	Atty Gen's Office
John R. McArthur	GENERAL ELECTRIC
Lacius Pullen	Attorney
John McLean	Moore & Van Allen
John McNeely	MF&S
Bryan Beatty	DOJ
Phil Telfeyan	DOJ
Bonnie Moore	Democratic Party
RANDY DYER	NSSTA
Thomas Countee, JR	NAT. Spinal Cord Injury Assn.
[redacted] Peeler	ZDA, PA
Steve Keene	NCMS
Jeff MAYNARD	

VISITOR REGISTRATION SHEET

of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Sam Johnson	Atty
Tommy Henderson	Lobbyist
Harold Webb	Lobbyist
James T. Ramey	DOT
Mark Benson	Capitol Group
David Simmons	ZDA, PA
Danny Rogers	NC DOT
Dale Mikel	Scenic North Carolina
Bernard Allen	SOG
Leon M Kellam	Mayor - Virginia Beach
Andy Romanet	N.C.B.M.

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 8, 1999

The Senate Judiciary I Committee met on April 8, 1999 at 9:30 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Dannelly to explain **Senate Bill 563 - AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS TO ESTABLISH SCHOOL ZONE SPEED LIMIT VIOLATIONS AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.**

Senator Soles moved to adopt a PCS for Senate Bill 563 for discussion. The motion carried by a majority voice vote.

Jo McCants, Assistant Committee Counsel, was recognized to explain the changes to the original bill.

Senator Albertson moved to give the PCS a favorable report. The motion carried by a majority voice vote.

Senator Soles, Acting Chairman, recognized Senator Cooper to continue the explanation of **Senate Bill 746 – AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.**

Senator Lucas moved to adopt a PCS for Senate Bill 746 for discussion. The motion carried by a majority voice vote.

Walker Reagan, Committee Counsel, was recognized to explain the PCS.

The following people were recognized to speak on the bill:

Sandy Sands – Lobbyist for the Multi-state Assoc./National Assoc. of Settlement Purchasers
James Terlizzi – Peachtree Sullivan (trade organization)
Cindy & Eddie Biddex – Morganton

Due to time constraints, Senator Cooper will bring the bill back to the Committee for further discussion at the next meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, April 8, 1999
TIME: 9:30 - 11:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB	172	Possession of Blue Lights Illegal	Rand
SB	563	Charlotte School Zone Speed Cameras	Dannelly
SB	601	DOC Prisoners' Uniforms	Rand
SB	654	Mfg'd. Home Law Restoration	Gulley
SB	711	Cornelius Photo Enforcement	Odom
SB	746	Structured Settlement Protection Act	Cooper

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 8, 1999

SB	172	Possession of Blue Lights Illegal	Rand
SB	563	Charlotte School Zone Speed Cameras	Dannelly
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SB	654	Mfg'd. Home Law Restoration	Gulley
SB	711	Cornelius Photo Enforcement	Odom
SB	746	Structured Settlement Protection Act	Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 563*

Short Title: Charlotte School Zone Speed Cameras. (Public)

Sponsors: Senators Dannelly; Albertson, Allran, Ballance, Clodfelter, Cooper, Hartsell, Horton, Hoyle, Kerr, Lucas, Martin of Guilford, Odom, Phillips, and Rucho.

Referred to: Judiciary I.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS TO ESTABLISH SCHOOL ZONE SPEED LIMIT VIOLATIONS AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

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-300.2. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring instrument or system which works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141.1 and G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141.1 detected by a

photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless within 21 days after the citation is issued, the owner notifies the officials or agents of the municipality that issued the citation of an intent to transfer responsibility to the person who had care, custody, and control of the vehicle at the time of the violation and it is admitted by the person identified that he or she had care, custody, and control of the vehicle at the time of the violation. The notification shall include:

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

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen.

Upon receiving a notification of intent to transfer responsibility, the officials or agents of the municipality may reissue the citation to the person identified by the owner having care, custody, and control of the vehicle at the time of the violation.

(2) A violation detected by a photographic speed-measuring 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. 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 an additional civil penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision."

Section 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.2(a) shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(c)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provision of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless it is found that:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) and the Secretary of Crime Control and Public Safety (hereinafter referred to as Secretary) pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the Commission and Secretary for that particular system.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the Commission and Secretary. A written certificate by a technician certified by the Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(c)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(c)(4) where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of such system."

Section 3. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.2(a) and establish the standards for calibration and testing for accuracy of each approved system."

Section 4. Section 1 of this act applies to the City of Charlotte only.

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S563-PCSSE-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 563
THIS IS A DRAFT 5-APR-99 14:46:02
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Charlotte School Zone Speed Cameras. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS TO ESTABLISH SCHOOL ZONE SPEED LIMIT VIOLATIONS AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

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(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

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Section 4. Section 1 of this act applies to the City of Charlotte only.

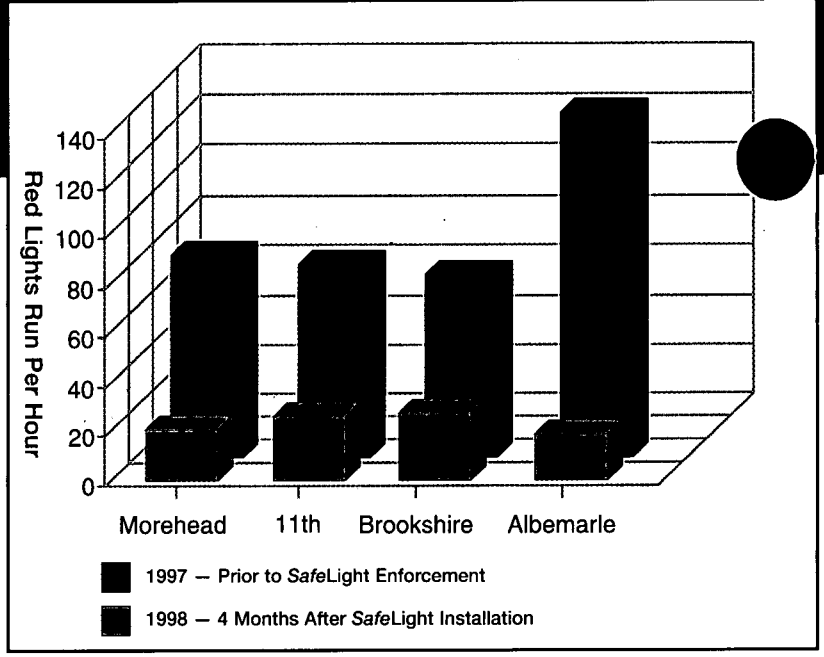
Section 5. This act is effective when it becomes law.

They've Finally Seen the Lights

The Success of Charlotte's *Safe*Light Program

SafeLight
safe streets
safe neighborhoods

"The most dangerous place to drive in North Carolina."
– The Charlotte Observer, September 2, 1998

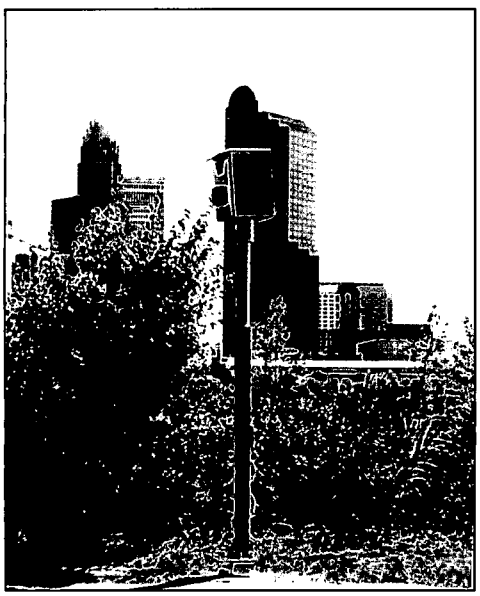


Red light violations have declined at a staggering rate at four SafeLight intersections.

Four years in a row, dangerous driving has been Charlotte-Mecklenburg's claim to fame. In 1998, the county carried only 7.7% of the entire state's traffic, but had 11% of the crashes and injuries. Thanks to the installation of *Safe*Light cameras at dangerous intersections, however, crashes are declining dramatically. Drivers are growing more cautious. Our streets are becoming significantly safer – for both drivers and pedestrians. And throughout Charlotte-Mecklenburg, they're finally seeing the lights.

Signaling Change

*Safe*Light cameras were introduced in Charlotte in August of 1998. Within four short months, crashes at camera-monitored intersections declined at a staggering rate: total crashes went down 25%, and crashes caused specifically by red-light-running declined 38%. At the intersection of Central Avenue and Sharon Amity Road, crashes were reduced by 41%.



SafeLight camera at the intersection of Morehead and College Street.

A Picture-Perfect Solution

Here's how the *Safe*Light program works: if a car enters an intersection after the signal has turned red, sensors embedded in the pavement activate the camera to take a photo of that car's license plate. Violating vehicle owners are sent a citation in the mail within two days. While the citation doesn't add any points to the owner's driving record or insurance, a $50 fine is charged.

As drivers have become more aware of the *Safe*Light program, violations continue to drop throughout Charlotte. The mere possibility of being caught and receiving a citation is causing drivers to become much more cautious.

On March 6, 1997, at the intersection of Albemarle Road and Harris Boulevard, motorists ran red lights at a rate of 28 cars per hour. After a SafeLight camera was installed, violations dropped 87% at that intersection.

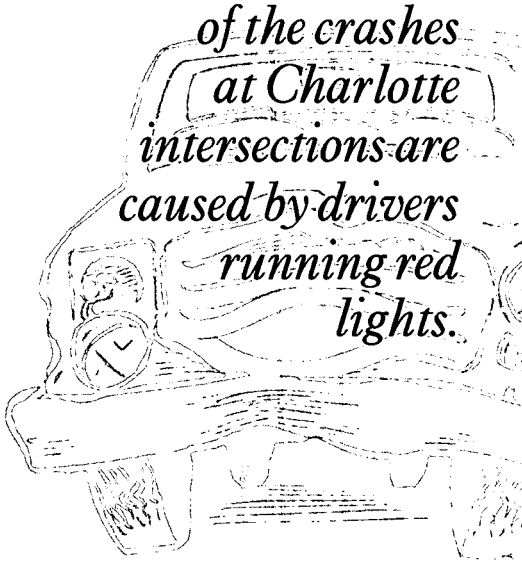
"Drivers running red lights cause about 260,000 wrecks each day nationally, resulting in 750 deaths."
– Insurance Institute for Highway Safety

Driving A Safer Future

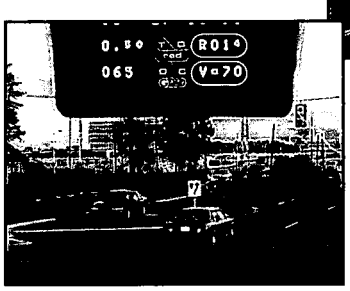
Before *Safe*Light cameras were installed, Charlotte-Mecklenburg drivers knew they had only a remote chance of being caught running red lights. Police resources are simply too limited to constantly monitor every intersection in town. *Safe*Light cameras, however, monitor intersections seven days a week, 24 hours a day. The certainty of receiving a citation – as well as the social stigma attached to it – is enough to incite a major change in behavior. The Charlotte community – including those who have received *Safe*Light citations – has embraced the program. Eighty percent of citizens polled were in favor of the program. And no wonder. The benefits of safer streets are far-reaching – from saving lives to containing insurance costs.

To learn more about Charlotte's *Safe*Light program, call 704-333-0905. And discover how Charlotte has finally seen the lights.

More than 50% of the crashes at Charlotte intersections are caused by drivers running red lights.



During the first six months of the SafeLight program, over 10,000 citations were mailed.



Photographs taken by SafeLight cameras indicate the time elapsed after the light turns red (circled in red) and the speed of the vehicle committing the violation (circled in yellow).

CHARLOTTE.

*Safe*Light is a program of the
Charlotte Department of Transportation

SafeLight

safe streets
safe neighborhoods

222 South Church Street
Charlotte, NC 28202
704-333-0905
www.ci.charlotte.nc.us/citransportation/programs/safelight.html

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, April 12, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **563** Charlotte School Zone Speed Cameras

Draft Number:	PCS 1671
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 746

Short Title: Structured Settlement Protection Act. (Public)

Sponsors: Senators Cooper; Ballance, Foxx, Kinnaird, Martin of Guilford, Miller, Rand, Reeves, and Soles.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"**§ 1-543.10. Title.**

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"**§ 1-543.11. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee

has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments, together with the discount rate used in determining such discounted present value;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in sub-subdivision e. of this paragraph;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both, to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was

in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties; and

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority; and

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed eighteen percent (18%).

"**§ 1-543.12. Definitions.**

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitely establishes that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service; or

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other

party that has continuing rights or obligations under such structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible

administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"**§ 1-543.13. Jurisdiction.**

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"**§ 1-543.14. Procedure for approval of transfers.**

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties, and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court

or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enfore this Article. In addition, the payee shall be entitled to reinstatement of all structured settlement payment rights lost as a result of violation of this Article by any transferee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, but nothing contained in this act shall imply that any transfer under a transfer agreement reached prior to such date is effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S746-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 746
THIS IS A DRAFT 7-APR-99 23:36:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in sub-subdivision e. of this paragraph;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both, to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in

effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties; and

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority; and

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed the annual percentage rate permitted under G.S. 25A-15(b)(4) calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan.

(8) The transfer of structured settlement payment rights is fair and reasonable.

"§ 1-543.12. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities

that definitely establishes that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service; or

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity

issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or

administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.12(8), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights

transferred as a result of a violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, but nothing contained in this act shall imply that any transfer under a transfer agreement reached prior to such date is effective.

REAL PEOPLE[5] WHO HAVE IMPROVED THEIR LIVES BY SELLING A PORTION OF THEIR "STRUCTURED" SETTLEMENT...

Irene H. (Prospect, CT, 33) lost her left leg in an auto accident when she was 17. The insurers agreed to a "$210,000" settlement. No one told her that with most of the money held back for decades, the deal was worth only a fraction of its stated amount. Fifteen years later, Irene's needs changed. A divorced, 33-year-old single mother, she wanted to resume her education. She also needed to purchase a new prosthetic limb. And she didn't want to wait until 1999 to get started. The insurer refused to pay any sooner. Therefore, Irene chose to *sell* a $30,000 payment that she was to receive in 1999. With the money she raised, she was able to return to school, satisfy debts, and purchase a new artificial limb, while retaining her right to receive a total of $150,000 coming due in 2004 and 2009.

Ten years ago, **Anthony D.** (Wallingford, CT, 28) was injured in an accident, leaving him with disfiguring scars. After a five year court battle, he agreed to accept a structured settlement -- 10 annual payments of $2,295.00 per year and a payment of $40,000.00 due in 2005. The insurance company called it a "$63,000" settlement. In fact, the settlement was only worth about $26,000. That fact was never explained to him. Following the birth of twins, Mr. D's family faced unexpected financial burdens. In 1997, Mr. D lost his job. Although his circumstances had changed, the insurer refused to pay any sooner. He and his wife then decided to sell his remaining settlement payments to satisfy debts and clear up a mortgage default that threatened their family home. Because he was able to sell his settlement payments, Mr. D was able to save his home and return to school where he is now training for a new job.

In 1987, **Robert G.** (Clay City, KY, 50) was injured in a truck accident. He accepted a structured settlement, giving him only $9,000.00 a year. Ten years later, he had trouble finding work as a driver and needed cash to buy his own truck, but the insurer refused to pay any sooner. Robert G. sold a portion of his settlement payments, using the proceeds to buy a truck and start his own business. As a result, he now makes $40,000.00 per year driving the truck that he was able to purchase by selling a portion of his future settlement payments.

Donna K. (IL, 30) was in an accident when she was only 10. Her case was settled for four annual payments of $10,000.00 commencing in 1987, monthly payments of $475 for life guaranteed for 30 years (commencing in 1991), and payments of $40,000.00 (due in 1999) and $65,000.00 (due in 2004). Ms. K. later married. Now, she and her husband are gainfully employed and planning a family. They needed cash to buy a home, but the insurer refused to pay any sooner. Therefore, she chose to sell five (5) years worth of monthly payments and the $40,000.00 payment due in 1999 to raise the cash she needed to buy a home, avoid private mortgage insurance, and make their mortgage payments affordable.

Gilbert H. (Chicago, IL, 41) didn't have a lawyer when the insurer talked him into settling his personal injury claim. He agreed to take $1,400 per month for 21 years. The "present value" of that deal was never disclosed to him. Later, Mr. H. needed cash to expand his auto body shop and comply with new environmental regulations. Banks were unwilling to consider his structured settlement payments as collateral and the insurer refused to pay

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[5] Actual Case Histories. Full names withheld to protect privacy.

any sooner. Therefore, he chose to *sell* some of his future payments for $60,000, using the money to expand his business, purchase a rental property, pay his daughter's tuition, and purchase health insurance for his family.

Dale A. (Chaffee, NY, 33) was injured in a 1984 car accident. His case settled before trial, with the insurer agreeing to provide a life annuity of $284.98 per month plus $15,000 ever five years starting in 1999, ending with a $50,000 payment in March 2029. In 1996, as an adult with a growing family, Mr. A. wanted to buy a home and expand his own business, but the insurer refused to pay any sooner. As a self-employed carpenter, he could not qualify for a traditional mortgage and banks wouldn't consider the structured settlement in evaluating his credit. Mr. A. then decided to sell a portion of his settlement payments for cash in order to acquire a home. Mr. A. sold just enough of his future payments (56 monthly payments and one lump sum) to achieve that goal.

Severely injured in a 1986 auto accident, **Edwin S.** (Pulaski, VA, 38) is wheelchair-bound. His settlement entitled him to $700 per month through 1991, $800 per month through 1996, $900 per month through 2001, $1,000 per month through 2006, $1,124 per month through 2011, $2,000 per month for life thereafter, and a $100,000 payment due in 2011. In 1996, he needed cash to build a wheelchair-accessible home. The insurer was unwilling to pay him any sooner. Therefore, he sold a *portion* of his monthly payments to raise the funds needed to build the wheelchair accessible home, using the balance to start a small business that he now owns and operates.

Gail A. (Merrick, NY, 41) suffered herniated discs and shoulder injuries in a 1991 car accident. Payment over time was the only form of settlement offered by the insurer. To avoid a lengthy trial, Ms. A agreed to settle for $66,000, plus $350 per month for 10 years. Most of the $66,000 was used to pay legal fees and outstanding medical bills. In 1997, Ms. A. found herself in financial difficulties; she had fallen behind on her property taxes. With little access to capital, Ms. A. decided to sell a portion of her settlement proceeds to save her home and pay her bills. She sold half of each monthly annuity payment for 80 months to raise the cash she needed. As a result, she kept her home and paid off other debts.

Seventeen years ago, when **Tarron B.** (Knoxville, TN, 21) was 4 years old, she suffered a broken leg, neck injuries and multiple fractures in an auto accident. Her structured settlement provided annual payments of $5,000 each commencing in 1995, $8,000 due in 2002, $12,000 due in 2007, and $10,000 due in 2012. Now she is 21 and has recovered. A married woman with two children, both she and her husband work. She wanted a home for her growing family and needed a substantial down payment in order to buy. The insurer refused to pay any sooner. Therefore, Mrs. B. chose to sell the payments due in 2002 through 2012, bought a home and satisfied her outstanding debts.

Johnell M. (Pineville, LA, 44) broke his back in a machinery accident. After 2 years of physical therapy and rehabilitation, he settled his claim for $1416 per month for life (increasing at the rate of 3% per year), plus $200,000 due in 2002. In 1997, Johnell was to be married. He needed cash to pay off debts and wanted to buy the home he had been renting. Moreover, he wanted to keep his monthly income, but didn't want to wait until 2002 to proceed with his life. In 1997, Mr. Moore sold a fraction of the $200,000 lump sum due to him in 2002, using the proceeds to pay off his debts and buy a car and a home. By selling a fraction of the lump sum due in 2002, Mr. M was able to keep his monthly income, without putting his wedding on hold until 2002.

Ruben Z. (Fontana, CA, 57) was injured on the job. In settlement discussions, the insurer

offered him a choice between $200,000 in upfront cash or $400,000 paid over time. He had no lawyer when he settled and the insurer never disclosed the present value of the payments over time. He agreed to take payments over time ($1,500 per month for life guaranteed for 20 years plus $2,500 every five years beginning in 1995). Eight years later, he wanted to remodel his home and to buy a new vehicle. The insurer refused to pay any sooner. Accordingly, Mr. Z. chose to sell a portion of his future payments, using the proceeds to remodel his home, buy a new family car, and invest the balance.

Six years ago, **Edward B's** (New Milford, CT, 48) wife was involved in an accident. Neither Edward nor his wife wanted a structured settlement, but the insurance company insisted on making payments over time. Later, Edward B. and his wife divorced. Edward didn't need payments over time, but wanted cash to pay off debts. The insurer refused to pay any sooner. He decided to *sell* a portion of the settlement payments awarded in the divorce, using the proceeds to purchase a car and satisfy outstanding debts.

In 1994 (at the age of 27), **Dwight F.** (Brooklyn, NY, 30) was injured in a motorcycle accident. He agreed to a structured settlement that pays 60 monthly payments of $3,000.00 through 2002; then 60 monthly payments of $3,400.00 through 2007; then 60 monthly payments of $3,800.00 through 2012; 60 monthly payments of $4,500.00 through 2017; and then 60 monthly payments of $5,350.00 thereafter for life (with a 3% annual increase every March 1st). In and out of the hospital for a total of ten (10) surgeries, he was unable to work consistently and fell behind on his child support obligations. The insurer refused to pay any sooner. Wanting to provide for his children and satisfy his past due obligations, Mr. F. sold a portion ($500 per month) of 60 monthly payments in exchange for an immediate lump sum in cash which he used to pay off his child support arrears.

When he was 4, **David C.** (Sandusky, OH, 22) was injured in a car accident. His family agreed to a structured settlement providing for ten years of monthly payments of $577.00 (commencing in 1994) and a lump sum in the amount of $25,000 due in 2004. By 1997, Mr. C.'s childhood injuries had healed, but his debts were mounting. The insurer refused to pay any sooner. Wanting to pay those debts and improve his credit, Mr. C chose to sell a *portion* of his monthly payments. By selling a portion of his monthly payments, Mr. C. was able to pay off his high interest loans.

Sammy C. (Pelham, AL, 42) lost his left arm in a 1990 machinery accident. He agreed to a structured settlement paying $700 per month for life, indexed at the rate of 3% per annum. In 1997, Mr. C. wanted to purchase land and install permanent utilities for a home. The insurer refused to pay any sooner. Therefore, he *sold* a portion of some of his monthly payments, raising the cash he needed to achieve his goals.

John H. (Hartford, CT, 38) was injured in a 1996 accident. After a two-year court battle, he accepted a structured settlement. No cash settlement was ever offered by the insurers, who insisted upon making payment over time. Wanting to purchase a home, Mr. H. needed cash for a down payment. The insurer refused to pay any sooner. Accordingly, he promptly sold a *portion* of his future settlement payments, using the cash to buy a condominium and pay outstanding debts.

Joanne Y. (Vermilion, OH, 53) (a teacher) suffered back and hand injuries in a 1991 accident. She settled her claim in 1993, agreeing to accept $574 per month for life, with 20 years guaranteed. Ms. Y. chose a structured settlement to augment her retirement income, but later, her plans changed. In 1997, she decided to purchase a home. The

insurer refused to pay any sooner and conventional lenders wouldn't consider her settlement payments as collateral. Therefore, she decided to *sell* five years of monthly payments in exchange for an immediate lump sum in cash. With the proceeds, she paid her debts, made a down payment on a home, and qualified for a conventional mortgage. By selling near-term payments only, Joanne Y. realized her home ownership dream, while keeping future payments to augment her retirement income.

In 1974, **Savane W.** (Fort Wayne, IN, 33) (then 10 years old) lost his legs in a train accident. His family accepted a structured settlement, affording him a lifetime of monthly payments. Twenty-five years later, Mr. W remained homebound and jobless. He wanted to start his own business and replace his aging prosthetic limbs, but lacked the cash to do so. The insurer refused to pay any sooner. Then, he saw a settlement purchaser's advertisement. In three separate transactions, he agreed to sell *portions* of his future payments in exchange for cash, keeping monthly annuity payments in an amount sufficient to meet his living and medical expenses. With the proceeds of his first sale, he paid for the repair of his aging prosthetic limbs; with a second sale, he converted his basement into a small commercial print shop; and when his business grew, he sold another portion of his payments to purchase a handicap-accessible van to handle pick-ups and deliveries. While keeping monthly annuity payments in an amount sufficient to meet living and medical expenses, Mr. W's also has his own business, earning $25,000.00 in its first year. For Mr. W., being able to sell some of his future settlement payments gave him "the satisfaction of having responsibility and independence."

Jane L. (Volutown, CT, 44) was in an accident resulting in neck and upper spine injuries. In 1996, she agreed to settle her claims for ten annual payments of $8,500 each. In 1997, Ms. L. found herself in a financial bind. The insurer refused to pay any sooner. Therefore, Jane elected to sell $5,500 of each of the remaining annual payments. With the lump sum she received, Ms. L. was able to pay her bills, save her credit rating, and buy property in Maine.

Sean W. (Bethlehem, PA, 25) lost his left eye in an accident. In 1992, he settled his personal jury claim for $831.68 per month for life. Now he is 25, married, and a father. With a growing family, Mr. W. needed a new vehicle and a home for his family. The insurer refused to pay any sooner and conventional lenders refused to consider his settlement payments in extending credit, but Mr. W. was able *sell* a portion of his future payments to achieve his goals.

John M. (Louisville, CT, 24) was injured in an auto accident when he was two. His parents settled the claim for monthly payments of $350 through 1994; and single payments of $10,000 in 1994, $15,000 in 1998, $20,000 in 2003, $25,000 in 2008, $30,000 in 2013, $35,000 in 2014, and $40,000 in 2023. The insurance company called the deal a "$186,000" settlement. Of course, the actual cost of the settlement was closer to $60,000, something that was never disclosed by the insurers. In 1997, Mr. M. wanted to buy a home and pay outstanding debts. Banks refused to consider the structured settlement in evaluating his credit. The insurer refused to pay any sooner. Without a significant down payment, he could not qualify for a home loan. By selling *a portion* of the future payments due to him under the terms of the settlement, Mr. M. was able to purchase a home and pay off his high interest rate debts.

Samuel G. (Monroe, CT, 42) was injured in a 1986 accident. Having no immediate need for funds, he agreed to accept a structured settlement paying him a series of installments over 15 years. Late in 1997, Mr. G. was laid off and his health insurance lapsed. Shortly

thereafter, he broke his jaw and damaged his teeth. Rather than deplete his savings, Mr. G. decided to sell a small portion of his future settlement payments in order to raise the cash to pay for the needed dental work. He has since returned to work.

Elisha W. (Quakertown, PA, 20) suffered injuries in an accident when she was a child. Ms. W's parents accepted a structured settlement on her behalf. -- $252 per month for 12 years, plus $50,000 due in 2006. Elisha is now a working adult; the small monthly checks merely served as a source of supplemental income. In 1997, she needed cash to purchase a car, pay taxes, and buy a home, but the insurer refused to pay any sooner. Therefore, Ms. W. *sold* her right to receive the monthly payments, retaining her right to the $50,000 lump sum. This gave her the cash she needed to achieve her goals -- a home, a new car and no debts, while retaining her rights to the future lump sum.

Jennifer S. (Wichita, Kansas) is a single mother in Wichita Kansas was having trouble meeting her monthly expenses. In fact, she was more than $13,000 in debt and living in a bad section of town with her son when she contacted Peachtree Settlement Funding. After having been refused by the banks and having tried all available alternatives, she refinanced a small portion of her future annuity payments. With a $20,000 lump sum provided by Peachtree, she was able to pay off all of her debts, purchase a reliable used car and move to a nicer section of town with her son where she is now employed and going to school with the goal of becoming a teacher.

Angela G. (Leesville, South Carolina) and her husband, a U.S. Marine, were having trouble making ends meet while living in Southern California. Despite diligent efforts, Mr. and Mrs. G. were forced to file bankruptcy. Just then, their automobile failed them. In need of dependable transportation and without credit because of their bankruptcy filing, the G.s' were almost without alternatives. However, with the help of a settlement purchaser, the G.s' sold a portion of the $1,700 a month they received in annuity payments. The G.s' now live in a nice home on a 2 acre lot in South Carolina with their daughter Alexis and their 3 month old baby boy, Mason.

Susan K. (Tucker, Georgia) decided to sell a small portion of her future structured settlement payments which were the result of a settlement of a personal injury case. With the funds from that refinancing, Susan was able to purchase a large piece of property in the mountains of Tennessee and realized her dream of being a homeowner. She has invited her mother and father to build a house on the property so they can enjoy their retirement years in a relaxed, beautiful and financially secure surroundings.

Maria M. (Phoenix, Arizona). After being abandoned by her husband, the mother of 4 was living in a run-down part of town with inadequate facilities for her and her children. She had run up $9,000 in credit card debt and was earning subsistence level wages in the only job she could get to by public transportation. However, after refinancing a portion of her settlement payments, she was able to clear up her high interest credit card debt, purchase a van to transport her and her kids, put a substantial down payment on a four-bedroom house, and still have money let over for investing. With financial and personal security afforded to her, she was able to look for a new job where she now earns over $35,000 per year.

Deborah T. (Salem, New Jersey) was desirous of helping her elderly parents repair their 200+ year old house located in New Jersey and listed in the New Jersey Historical Registry. By refinancing a portion of her structured settlement payments, Deborah was able to help her parents renovate the home so it is now comfortable, safe and in good repair for another 200 years.

Deeana T. (Brandenton Beach, Florida) is single mother of a teenage boy. Deeana owns and runs a small nail care business from which she makes enough money to pay the bills, but not enough to provide for the braces her young son desperately needs or the things he would like prior to starting high school. By refinancing a portion of a future lump sum payment she was entitled to as a result of a structured settlement, Deeana was able to pay for the braces and purchase some new clothing for her son prior to his enrolling in high school. A few months later, Deeana called back and decided to sell another portion of her lump sum payment in order to obtain a down payment for a home. With the money provided in that refinancing transaction, she was able to pay off her high interest credit card bills and put down enough money to purchase a home. Deeana is now a home owner with a happy high school aged son and successful nail care business.

Destini W. (Milwaukee, Wisconsin) was cajoled by the insurance industry into accepting a structured settlement. She signed not knowing that she wouldn't be able to readily access the funds if she needed them in the future. In the Summer of 1998, Destini had a unique opportunity to open her own business. However, she needed a $100,000 in financing. Young and with a limited credit history, no bank would touch her. However, when she contacted Peachtree Settlement Funding, she was able to refinance a portion of her future settlement payments and raise over $110,000 which she and her mom used to form their own business. Their healthcare services business is now thriving and Ms. Wynn is grateful for the opportunity.

Kimberly and John J. (Kansas City, Missour) have a structured settlement as a result of a medical malpractice claim. John was a manual laborer and the bread winner for the family. However, after the tragic death of one of their children, John became deeply depressed and was unable to maintain his job. As a consequence, they quickly fell behind on their mortgage and were in danger of foreclosure. After contacting a settlement purchaser, the Jeanquart's were immediately advanced enough money to prevent the foreclosure and with the rest of the money from the refinancing of a portion of their structured settlement, they were able to get out of debt. Unfortunately, shortly thereafter, John broke his wrist and was again unable to work. The Jeanquart's again turned to a settlement purchaser and refinanced a small portion of their future payments in order to cover this emergent situation. In short order, they had enough money to pay their bills while John's wrist healed. They even put away some of the money for future emergencies. The Jeanquart's would probably have been homeless absent the option of refinancing a portion of their settlement payments.

P. Fudge (San Diego, California) is 18 years old. Trapped in an abusive relationship with her step-father she was desperate to escape. However, with limited resources she needed a small portion of her future payments in order to facilitate her move. After contacting Peachtree Settlement Funding, she was able to monetize a portion her future payments and escape her abusive step-father's grasp. Ms. Fudge is attending a local college and working part time. According to Ms. Fudge, "Without Peachtree, there's no telling what might have happened".

Cynthia and Edwin B. (Morganton, North Carolina) received a settlement on behalf of a critically injured child in a medical malpractice case. Unfortunately, not long after the settlement was reached, their child passed away. Both are employed and with a small business to boot, the Biddix's do not rely on the annuity payments at all. In an effort to get over the tragedy and to expand their own business significantly, the Biddixes monetized a portion of the future payments and the Biddixes now operate two retail sites and a small manufacturing facility.

John B. (Chesterfield, Virginia). In September, 1988, John B. was injured in an accident. In October, 1988, Mr. B. settled his personal injury case for series of future payments. In November of 1997, however, he realized that the monthly payments he was receiving were merely being spent on miscellaneous expenses and he had nothing to show for them. With a desire to buy a home and start his own business, Mr. B. contacted Peachtree Settlement Funding. After refinancing his settlement and obtaining a lump sum for a portion of his future payments, Mr. B. was able to start a successful towing company and purchase a home. Mr. B. was also able to catch up on all of his outstanding bills and is now a happy home owner and business operator.

Kimberly F. (Ocala, Florida) was receiving $419.00 a month as a result of an accident which occurred on February 7, 1997. Unfortunately, this barely helped her meet her monthly expenses. She was forced to drop out of the University of Georgia as a result of her finances. With the $17,206.00 she received from refinancing a portion of her future settlement payments, Ms. Freeman was able to satisfy all of her creditors, put a down payment on a home, purchase a reliable used car and re-enroll in college in her new home in Florida.

Robert C. (Witter, Arkansas) settled a personal injury claim for incremental lump sums. While fully recovered from his accident, Mr. C. was in the process of building a new home when he ran short of funds. With mounting debts and an unfinished home, Mr. C. turned to a settlement purchaser in order to obtain a portion of his future payments today. With the money provided by the funder, Mr. C. was able to finish his new home and pay off all the debts. He has now realized his dream of living in a brand new home in his home of Witter, Arkansas.

Karen B. (McMinnville, Oregon) is entitled to receive settlement payments from a tragic wrongful death accident involving her son. By selling a portion of the settlement payments she was entitled to, Karen was able to achieve her goal of purchasing a new house. While certainly not making up for the tragic loss of her son, Ms. B. is now living in the home she always wanted.

Billy H. (Anoka, Minnesota) cares for his mother, a paraplegic, who was injured in a tragic car accident. After years of caring for his mother in a small apartment, Mr. Hopp decided it would be more comfortable for both he and his mother if they lived in a house that was more assessable to the handicapped. Unfortunately, although employed in a good paying job, Mr. H. was unable to save up the down payment for such a home. However, by monetizing a small portion of the annuity payments his mom was entitled to, he and his mother were able to purchase a home which is assessable to the handicapped.

Norman R. (Marana, Arizona). Norman's motorcycle and auto rental business was struggling because he did not have enough capital for additional motorcycles, cars and marketing. Mr. R. contacted a settlement purchaser and within 45 days converted a portion of his future payments to a lump sum of cash. With the $97,142.00 he received, he expanded his business, developed a marketing site on the world wide web, purchased three additional rental cars, 5 additional Harley-Davidson motorcycles and a Dodge truck. As a result of these improvements, Mr. R. monthly profits increased to over $6,000 and he is currently expanding into a new business opportunity. In his own words, as a result of this refinancing transaction, he is once again "enjoying life."

Sarah S. (Bakersfield, California) settled her case in early 1983. The terms of her settlement provided for lump sum payments commencing 10 years later. The payments she was due were as follows: $25,000 due July 7, 1993, `94, `95, `96, `97; $75,000 due

on July 7, 2000, $150,000 due July 7, 2005. A newlywed, Sarah and her husband had gotten themselves into a financial bind. They were 3 months behind on their car and home payments and had medical bills for which they were being dunned. To make matters worse, the structured settlement that she was to receive was from an insolvent company (First Executive Life in rehabilitation). After trying to obtain financing from "everywhere" Sarah contacted a settlement purchaser. By monetizing a portion of her next two lump sum payments, she was able to get the money she needed to catch up on her bills, prevent the foreclosure of her home, pay off her medical bills and other debts and get her and her husband's life back on track. "Now my husband and I don't have to worry about those bills anymore. We can enjoy the finer things in life and each other."

Jason A. (Tuckerton, New Jersey) settled a personal injury case in exchange for 4 lump sum payments to be made in the future. Despite being employed and having a fair credit rating, Mr. A. could not afford the home he wanted on his present income. By monetizing his next two lump sum payments, Mr. A. was able to pay up his past debts and put a substantial down payment on the home of his choice thereby lowering his monthly payment to an affordable level. Mr. A. is now a proud homeowner.

Keith O. (Zephyrhills, Florida) had settled his personal injury case for a structured settlement paying him $535.95per month. Unfortunately, this money was being spent as discretionary income. With a desire to start his own woodworking business, Mr. O. sought the services of a settlement purchaser. In exchange for 60 monthly payments, Mr. O. received $19,338.00 which he used to purchase the power tools he needed to equip his wood working shop. He is now using them in his own successful woodworking business.

Lisa S. (Miami Beach, Florida) lost her left leg at the knee in an automobile accident when she was 18 years old. Despite a college degree in Marketing and a desperate desire to use it and be gainfully employed, Lisa was stuck in the house as her prosthesis no longer fit properly. Despite repeated efforts to get the structured settlement insurance company to give her an advance, she was always rebuffed. Lisa's settlement provided for $1,000 a month with a 3% annual increase. After contacting a settlement purchasing company, Ms. S. agreed to sell a small portion of her monthly payments in order to provide the $38,000 she needed for a new prosthesis and automobile to accommodate her situation. When the settlement purchaser checked in with her after the refinancing transaction, Lisa reported that she had a job at a law firm, was studying for her real estate license and was closing on a new condo within the next month.

Ronald F. (Cheektowaga, New York). After settling a personal injury case over 14 years ago, Ronald F. was entitled to over 30 years worth of monthly payments. In 1998, with over $17,000 in back child support debt and a desire to start a business, Mr. F. contacted a settlement purchaser. He refinanced a portion of his future payments and obtained the money he needed to pay off all of his back child support and other debts and invest $50,000 in a pizzeria. Mr. F. contacted the settlement purchaser who help him the first time again in early 1999 to confide as to how well the pizzeria was doing and he advised that he might wish to refinance another portion of his structured settlement in order to purchase a residential investment property.

Richard C. (Manassas, Virginia) a single parent of one daughter, was living in a Section 8 housing unit in Virginia. The environment was not to his liking and he did not feel it a safe environment for his daughter. Over 10 years ago, Mr. C. settled a personal injury case in exchange for 30 years worth of payments in the amount of $582.00 per month. However, after having to undergo hip surgery in 1998, and concerned about the safety of his daughter, he decided to refinance a portion of his structured settlement payments in

order to purchase a home. Mr. C. sold 60 monthly payments of $582.00 and received a $23,651 check from a settlement purchaser. With those funds, he was able to put the down payment on a house in nice neighborhood with good schools. Mr. C. has called the settlement purchaser several times to express his thanks for the new lease on life he received.

June C. W. (Ohio) was the victim of an unfortunate medical malpractice claim involving an improper diagnosis with breast cancer and radical mastectomy. Her structured settlement provides for payments of $500.00 per month for life with 2 lump sum payments; one in the amount of $25,000 due August 19, 2003 and $57,000 due in August of 2008. To add insult to injury, June's husband left her not long after the mastectomy. Despite working full-time as a waitress to provide for her family, June was having difficulty making ends meet. Additionally, she had developed a problem with her foot and was uninsured. She approached a settlement purchaser and monetized a small portion of her future payments to pay for the medical treatment she desperately needed on her foot. Sometime thereafter, she and her new husband had some financial difficulties and she again monetized a portion of her future payments to purchase a new vehicle and renovate the home they had purchased. As a result of the flexibility provided by these refinancing transactions, June was able to rebuild her life.

Marcia G. is divorced and in her 40's with two adult sons. She is the recipient of a structured settlement funded by Confederation Life (currently in receivership). Despite the tenuous financial condition of the annuity provider, a settlement purchaser was able to provide her the $12,000 she needed to help her two adult sons out of some immediate financial difficulties and to allow her to invest the balance of the funds in an employer matched mutual fund. This resulted in an instant 100% return on her investment! Marcia was able to do something for her sons and herself by monetizing a portion of her future settlement payments.

Christopher I. was 13 when his personal injury case was settled. The settlement provided for a long series of payments in the amount of $356.25 per month. Now an adult and wishing to better his life, Mr. I. decided to sell a 10 year series of payments in exchange for a $20,000 lump sum. With the lump sum, he moved to Atlanta, Georgia, changed jobs (more than doubling his income) and purchased a home. Mr. I. has been in touch with the settlement purchaser that helped him in this transaction numerous times since the closing to express his thanks for the opportunity provided.

Sedia W. (Hinesville, GA) was injured in a 1985 car accident. Her case settled before trial with the insurer agreeing to provide a life annuity of $700.00 per month plus $20,000 every 5 years starting in 1986. 10 years later with a growing family, Sedia wanted to buy a home and expand her own business but the insurer refused to pay any sooner. Since she was self-employed, she couldn't qualify for a traditional mortgage and banks would not consider the structured settlement in evaluating her credit. Mrs. W. then decided to sell a portion of her settlement payments for cash in order to acquire a home. She sold just enough of her future payments (60 monthly payments and one lump sum) to achieve that goal. She is now a happy home owner and business operator.

Barry P. (Warwick, NY). Twelve years ago Barry P. was injured in an automobile accident. The accident left him with a broken hip and two broken legs. At the time of the settlement, Barry believed that having the money come to him in spurts would be good for him, As a consequence, he settled for three lump sums due in the years 2000, 2004 and 2008. In late 1998, Barry had the opportunity to go into business for himself with a family member but needed $100,000 to do so. Unfortunately, he only had $70,000 of his own.

By monetizing one of his lump sums, Barry was able to acquire the extra $30,000 he needed to close on this business transaction. Barry business is now booming and he is averaging over $5,000 a month in profits. He plans to expand from New York into Pennsylvania in the near future.

John J. (West Virginia). Mr. John J. of West Virginia settled a personal injury case for a series of annuity payments. Divorced with two children, Mr. J. fell upon hard times when he lost his job. With several thousand dollars in back child support and more mounting, he turned to a settlement purchaser to refinance a portion of his settlement payments. With the lump sum he obtained, he paid off his back child support and put away enough money to cover any future emergency should he lose his job for a short time in the future.

Duane S. (Springhill, FL). Mr. and Mrs. Duane S. lost their daughter in a tragic malpractice incident. After several years of litigation, the matter was finally resolved with a structured settlement. Under the terms of that settlement, he and his family would receive monthly checks for life with 20 years guaranteed. However, with the high interest credit card debt that they had accrued, they were unable to get ahead of their bills. By selling a portion of their future payments, Mr. and Mrs. S were able to pay off all of their credit card debts, their home mortgage, their car loan and had enough left over to open their own business. Their family business is thriving and they still receive a portion of the monthly payments from the tragic loss of their daughter.

Stanley K. (Hapeville, GA) received a structured settlement as a result of an auto accident which paid him $250.00 per month. However, that small sum was not helping out with his massive credit card debt. As a consequence, Stanley was spiraling further and further into debt and was going to file bankruptcy until he saw an ad by a settlement purchaser. With the lump sum he obtained by selling his monthly payments, Mr. K was able to pay off all of his debt and rescue his credit from disaster.

Russell H. (Chicago, IL). Mr. H. was injured in an auto accident and was awarded $1,200 per month for 40 years with a 3% cost of living adjustment. Unfortunately, as an adult his family couldn't afford to send him to school and his monthly settlement check was not nearly enough to live on and pay school expenses at the same time. As a consequence, he took a job. However, without formal education, he felt his earnings potential would be limited and he would be trapped. After seeing an advertisement from a settlement purchaser, Mr. H. decided to sell a part of his future payments in exchange for a lump sum. With the advise of a financial advisor, he was able to invest this money and pay for college.

Tierrany S. (Shelby, OH) settled a personal injury case which paid her three lump sum payments of $10,000 each due in the years 2000, 2001 and 2002. Unfortunately, she had to drop out of college because she could not afford the cost. As a newlywed and expecting her first child, she was terribly disappointed at not being able to finish school. By selling just a portion of her first two payments, she was able to get enough money to finish college and buy her husband a small truck which enabled him to get his landscaping business started. Tierrany S. is now a court reporter and her husband is operating their landscaping business.

Johnny C. (Arizona) was hurt in an auto accident when he was a minor. After 4 years of litigation with the insurance company, his family finally accepted a structured settlement

on his behalf. With his automobile failing him and poor credit to boot, he could not afford reliable transportation needed to get him back and forth to work. That's when he decided to sell a portion of his future payments to a settlement purchaser in exchange for a $27,000 lump sum. With that money, he was able to buy a car and put a down payment on a home so that he and his family could move into a safer neighborhood.

James L. finally settled his automobile accident in 1998. After years of litigation, he finally settled for $495.00 per month for life. Unfortunately, during the litigation, he had accumulated medical bills, and his automobile had broke down causing him to lose his job. As a consequence, he decided to sell a portion of his future payments in order to fix his car and get back to work. With that done, he is now gainfully employed once again.

Steve E. (North Platte, Nebraska) was injured in a railroad accident leaving him with a badly damaged hip and recurring back pain. His settlement provided for payments of $3,000 a month and a $4,000 lump sum every year. Unfortunately, most of this money was used to pay his monthly living expenses. Recently, a doctor advised him that if he could come up with $12,000 he could have hip replacement surgery and likely rid himself of the pain he had been living with. After calling the insurance company and being told there was nothing he could do, Mr. E. contacted a settlement purchaser and sold approximately 10% of his monthly payments for several years in exchange for a $12,000 lump sum which paid for his hip replacement surgery. For the first time in more than 10 years, Mr. E. is living without pain.

Leslie B. (Florida) settled a personal injury case in exchange for a series of lump sum payments due well in the future. She was also receiving $1,000 a month from her settlement but that barely covered the expenses of her and her three children after being abandoned by her husband. After contacting a settlement purchaser she was able to sell a portion of her future lump sum payments to purchase a badly needed car, some new furniture and to pay off her debts. Ms. Burdick is now planning to be remarried in the next few months and is debt free.

WHAT'S THIS FIGHT REALLY ALL ABOUT ?

If It Is About Protecting North Carolina Consumers:

Why won't the insurance companies sit down and work out a true consumer protection bill ?

Settlement Purchasers have supported and will support a law that provides:

- Full and complete disclosure;
- A five day right of recission;
- Court orders where the original settlement was court approved;
- Court orders where the purchase price is more than $100,000. and the transfer is in the best interests of the claimant.
- Court orders if a court or IRS revenue ruling determines that a transfer of structured settlement payments causes a genuine tax liability to the annuity issuer, settlement obligor or claimant.

Why do they insist on absolute veto power over the transaction ?

Why have they picked a standard of review which is so onerous that virtually no one could achieve it ?

- A standard that is higher than that needed to settle the claim of a minor;
- Higher than the standard applied to the adoption or custody of a child.

Why do they point to a federal bill as the stalking horse for the need for S 746/HB 853 when they had the federal bill introduced ?

Why do they insist that the bill apply to non-North Carolina residents ?

Why don't they tell you that Settlement Purchasers have paid millions of dollars in back child support, and state and federal tax liens ?

Why don't they tell you who gets hurt by S 746/HB 853 ?

- Lower income people and minorities who don't have access to other forms of capital get hurt.
- Thousands of employees at hundreds of small businesses throughout the nation get hurt.
- People who won't be able to afford to buy a home, pay for school or improve their lives get hurt.

Why don't they tell you who really gets structured settlement payments ?

- More than 85% of structured settlement recipients are not disabled and are gainfully employed.
- 92% of claimants are "satisfied" or "very satisfied" with the re-financing of their settlement which they accomplished with the help of Settlement Purchasers.
- The average person who re-finances a structured settlement is 33 years old, employed with a household income of nearly $25,000.
- More than 50% of structured settlements have a present value of $30,000 or less.

(Source: Best's Review - November 1998)

Why do they contend that structured settlements are intended to prevent people from receiving a lump sum when more that 65% of all structured settlements are for lump sums paid at some arbitrary time in the future ?

If It Is About Taxes:

Why do they hide the fact that opinions have been issued by Morrison & Foerster's national tax office, PriceWaterhouseCoopers, Wolf, Block, Schorr and Solis, the United States Court of Appeals and the IRS itself stating that there is no "tax issue".

Why do they hide the fact that the United States Court of Appeals for the Third Circuit has ruled on this issue ?

> "The Haydens would have us conclude that Reliance would retroactively lose this (the § 130) exclusion if Ms. Hayden assigned her right to receive the periodic payments under the settlement agreement... The Hayden's, however, do not cite, and our research has failed to reveal, any support for this novel proposition. We are therefore unpersuaded by the Hayden's theory..."

Why can't they point to a single letter, rule, case or memorandum from any governmental entity which supports their contentions that there may be a tax problem ?

Why don't they tell you that Allstate obtained a ruling from the IRS which allows them to offer lump sums in certain circumstances (IRS PLR 116384-97) ?

Why do they fail to point out that the tax code clearly and unconditionally exempts from income payments received as compensation for personal injuries ?

> IRC § 104 (a) (2) exempts from income "the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;"

So What Is It Really All About:

Its about money !

Structured Settlements save the insurance industry billions of dollars in settlement costs.

- The Travelers Structured Settlements Manual says:

  "The <u>primary objective</u> in expanding the use of structured settlements is to maximize their value as a tool to reduce both claim loss and expense costs."

  "Essentially, when a claimant has a reduced life expectancy and a substandard age rating has been obtained, the more life contingent benefits provided in the structure offer, the higher the savings on the claim."

- Ringler Associates, the country's largest structured settlement broker boasts:

  "Initially, the concept was used on large, catastrophic-injury cases. Today, claims as small as $5,000 are structured."

Insurers make billions more by investing the lump sum than they would otherwise pay to an injured person and paying that person only a fraction of the interest they earn each year.

The Montgomery County Court in Maryland sure knows it:

Excerpt of transcript Stone Street Capital v. Deborah L. Jackson, Civil No. 176131.

THE COURT: Why is it, by the way, that traditionally these [structured settlement annuity contracts] are non-assignable?

COUNSEL FOR STATE FARM: There are a lot of reasons One is to protect the victim usually of personal injury. The whole reason for setting up these –

THE COURT: Protect them from what?

COUNSEL FOR STATE FARM: The whole reason for setting up these structured payments is so that they do not get a lump sum; they do not get $300,000 up front. These people–

THE COURT: **No it is not. The reason for setting up these structured payments are so that the insurance companies can settle out cheaper.**

COUNSEL FOR STATE FARM: **That is one reason.**

THE COURT: All right, come on–

COUNSEL FOR STATE FARM: I am not going to deny that.

THE COURT: They are not looking out for a plaintiff in a personal injury case. Please.

COUNSEL FOR STATE FARM: **That is one reason that Your Honor has said. It is more cost effective for the insurance company–**

THE COURT: **That is the reason. That is the reason.**

COUNSEL FOR STATE FARM: **Okay.**

Its About Their Need to Keep A Secret:

- We demonstrate what the real value of a structured settlement is. This makes the insurers fearful that as injury victims become more educated about present values, they will demand lump sum settlements and hence cost the insurers money.

- They know that the corporate welfare provision of the tax code known as IRC §130 was adopted by Congress to facilitate settlements of catastrophically injured people who are in need of long term care (thalidomide babies and the like).

- They know that they have exploited and corrupted the laudable policy objectives underlying § 130 by settling every slip and fall, fender bender and garden variety tort claim with a structured settlement.

- They fear that if Congress gets wind of what they have been up to Congress may just reform § 130 and hence;

- They fear the light we shed on the market and their practices.

It's About Their Own Fear of Regulation:

Most insurance policies convey the following rights, but not insurance policies used by structured settlement companies. Most insurance products give you:

- the right to assign the proceeds;
- the right to take out a policy loan;
- the right to take cash out at policy maturity;
- the right to name and change a beneficiary;
- the right of the beneficiary to select a settlement option.

Yet with a structured settlement you get none of these rights !

It's About Greed:

Insurance carriers want this business for themselves.

- Allstate Insurance Company obtained a ruling from the IRS so that <u>they</u> could offer lump sums to beneficiaries of structured settlements !

- Why don't they tell you that insurance companies buy the bonds we create which are repaid by the settlement payments ?

- The insurance industry knows that the services provided by Settlement Purchasers are valuable and highly sought after. They like the bonds we create and now want to control and monopolize the market for themselves.

- Why don't they mention the fact that S 746/HB 853 will not effect Allstate or any insurance company commutation of a structured settlement ?

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Before you decide just ask yourself - What's it really all about ?

STRUCTURED SETTLEMENTS & HB 853
CUTTING THROUGH THE DEMAGOGUERY

Summary: Structured settlement purchasers provide a valuable service to individuals that originally choose a structured settlement instead of a lump sum and now wish to alter the timing of some or all of their payments. The vast, vast majority of structured settlement recipients are employed and perfectly capable of deciding what is best for them financially. They had the right to choose a lump sum at the time of settlement and should continue to have the right to choose how they get their money. S. 746/HB 853 eliminates citizens' rights to choose what to do with their money.

Myth: Structured settlements are used to provide for the long term care of seriously injured people.

Reality: Over 85% of structured settlement recipients are gainfully employed or capable of working and do not suffer from a long term disability.

The average size of a structured settlement is only $75,000. This is hardly enough to provide for the long term care of a critically injured person.

Ringler Associates, the country's largest structured settlement broker boasts:

> **"Initially, the concept was used on large, catastrophic-injury cases. Today, claims as small as $5,000 are structured."**

Myth: Structured settlements were intended to prevent people from quickly dissipating their awards.

Reality: The vast majority of people had the choice of a lump sum or a structured settlement at the time of settlement and they chose a structured settlement.

S 746/HB 853 takes away freedom of choice. As we are all aware, changing life circumstances alter ones financial needs. The freedom to contract to meet those needs is a fundamental right. Just because a person elected not to take a lump sum at the time of settlement shouldn't mean they are forever restricted from so doing.

Myth: Claimants who sell a portion of their settlements squander the money.

Reality:
34% Use the money to buy or renovate a home
31% Pay off existing debts including tax liens and child support obligations[1]
14% Pay medical expenses
11% Use the funds to open or expand a business.

Myth: Settlement Purchasers use high pressure sales tactics and usurious interest rates.

Reality: Settlement Purchasers advertise and respond to in-bound phone calls. The claimant initiates the contact and can terminate the contact by simply saying they are not interested.

Settlement Purchasers insist that individuals seek legal and financial counsel before they sign a

[1] Settlement Purchasers require that tax liens, child support and alimony are paid. As a result, during the last two years over $9,000,000. in child support, alimony, tax liens and other debts have been paid.

contract. Most contracts for sale of settlement payments contain a 3 day right of recission and all terms and conditions are fully disclosed in writing.

The discount rates charged by Settlement Purchasers are consistent with the rates of major credit card companies throughout the US and competition is driving discount rates down all the time.

Myth: IRC § 130 was adopted to encourage people to accept long term pay-outs of personal injury claims and the Treasury Department has so found.

Reality: IRC § 130 was passed at the behest of the insurance industry because it provides them a huge tax benefit. The inclusion of the language regarding "accelerating, deferring, increasing or decreasing" the payments was added solely to protect the claimant from the possibility of "constructive receipt".

Former Assistant Secretary of the Treasury for Tax Policy, John E. Chapoton testified before the US Congress at the time Section 130 was originally passed (1982) and again recently.

"The sale of structured settlement payments by a claimant should have no adverse tax consequences to any party... The notion that a sale by a claimant, many years after the fact, could somehow cause the structured settlement company to lose its original benefit under section 130 (or could somehow cause constructive receipt to be revisited) is nonsensical. *It cannot be a serious assertion.*" (Emphasis added)

> - Testimony of John E. Chapoton, Esq., March 18, 1999, United States House of Representatives Ways and Means Subcommittee on Oversight

Chapoton went on to note that

"There is no regulation, ruling, notice, or formal or informal pronouncement which indicates the IRS views the sale of settlement payments as raising tax issues under sections 104 or 130. There is no evidence that the IRS has ever raised this issue in any audit. Only one court case has dealt with this issue. The Third Circuit, in a bankruptcy decision, squarely addressed and rejected the argument that a subsequent assignment would cause a settlement company to retroactively lose the income exclusion provided by section 130. The court went so far as to dismiss the argument as "novel"."

> - Testimony of John E. Chapoton, Esq., March 18, 1999, United States House of Representatives Ways and Means Subcommittee on Oversight

Myth: Insurance companies wish to protect structured settlement claimants from themselves.

Reality: This is a total fallacy. Claimants have complete latitude to accept a lump sum or structured settlement at the outset.

Structured settlements are incredibly profitable for the insurance companies and the brokers that set them up (the NSSTA and its members).

Take it from them - The Travelers Structured Settlements Manual says:

> **"The <u>primary objective</u> in expanding the use of structured settlements is to maximize their value as a tool to reduce both claim loss and expense costs."**
>
> **"Essentially, when a claimant has a reduced life expectancy and a substandard age rating has been obtained, the more life contingent benefits provided in the structure offer, the higher the savings on the claim."**

The insurance industry does not like the fact that Settlement Purchasers are educating the public about the "time value of money" (the real value of the settlement they accepted).

Myth: S 746/HB 853's exception for court approved hardships addresses the needs of those who really need access to their money.

Reality: There is no court procedure for obtaining such an order in 46 of the 50 states.

To the extent that a petition can be brought before a court, the bills standard of "extraordinary, unanticipated and imminent" will lead to a disparity of results amongst and between residents of the several states. Moreover the cost of going to court is excessive particularly given the small size of the average transaction (less than $20,000)., Additionally, insurers routinely file 40-50 pages briefs and objections to transfers in the three states that require a court approval.

Myth: Settlement Purchasers oppose regulation.

Reality: The Settlement Purchase industry embraces reasonable regulation and recently sought to introduce such legislation in Illinois which was opposed by the NSSTA and the insurance industry. Settlement Purchasers have and will support reasonable regulation at the federal and state levels.

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Key Points on the Structured Settlement Bills

- **Private Insurers Should *Not* Be Able to Veto Court Decisions.** This bill was *supposed* to make it possible for structured settlement claimants to sell some or all of their future payments *IF* a court approved the transaction. In fact, the bill says that a court *cannot* approve a transfer without the written consent of the insurer -- even if a claimant desperately wanted to sell and even if a court found that the claimant needed to sell. **In effect, the bill gives the insurers an absolute veto - even over transactions that the courts would otherwise approve!** The *courts* (not an insurer) should decide whether a sale is in the best interests of a claimant.

- **Sales Shouldn't be Limited to the Desperate and The Needy.** This bill would tell the courts that *only* a claimant facing "imminent financial hardship" could sell. In other words, the richest guy in town *can't* negotiate a sale - even *with* court permission; but the fellow who's desperate - who faces "imminent financial hardship" - can. That's discriminatory and arbitrary (and perhaps backward). The court should be asking, "what is in the best interest of the claimant?"

- **Bank Lending Should Be Excluded.** The bill was supposed to be about unregulated "factoring" transactions, but by its terms, it also covers *loans* and *bank lending.* We already have plenty of regulations dealing with lending by banks and finance companies. This will make it difficult (if not impossible) for banks to make secured loans to people who are getting payments like this over time. And it will make it difficult for personal injury law firms to secure affordable credit.

- **Court Orders should not be required unless the original settlement was court approved.**
  The average transaction is quite small - they average less than $20,000. In most cases the individual had the choice of accepting a structured settlement and they should not have to go to court now because they have changed their minds.

Prepared By The National Association of Settlement Purchasers (1-888-311-NASP)

- **Claimants Deserve These Protections *Whenever* Asked to Choose Between Cash and Payment Over Time.** Whenever a personal injury claimant is asked to choose between upfront cash and payment over time, the claimant should be: (1) advised to consult with a lawyer or other professional advisor; (2) told what they are getting and what they are giving up; and (3) told what the interest rate or discounted value is. The disclosures should be made and claimants advised to consult counsel when they are considering a sale *and* ***when getting into a settlement in the first place.*** That's only fair. In its current form, this bill will be seen as a one-sided effort to protect insurance companies at claimants' expense, leaving claimants without any meaningful disclosure requirements or safeguards at the "front-end" -- and no meaningful opportunity to cash out when and if their circumstances later change.

- **The Law Should be Limited to Resident of the State Promulgating the Law.** Court approval is required for any case involving a North Carolina insurer -- even if a Californian has sued a Californian in California, settled in California, and later decides to sell payments to a Californian. Why should North Carolina open its courts to process all of those cases? Does someone expect Californians to bring their applications *under this law* in California courts? How can *one state's legislature* expand the scope of *another state's* courts jurisdiction? It can't be done. The bill only works to the extent that its scope is limited to the residents of the state in which the law is adopted.

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What Is A Structured Settlement?

A structured settlement is a financial arrangement that stems from a personal injury or wrongful death claim. Typically, the beneficiary or claimant is paid over a period of years in a series of installments with inflexible payment terms, rather than through a single lump-sum payment. Usually, the settlement takes the form of monthly payments, periodic lump sums, or a combination of the two.

Under the terms of a settlement that qualifies for preferable tax treatment, the claimant cannot access future payments. As a result of this inflexibility, claimants whose life circumstances change often require additional funds from the settlement. To meet this need, a secondary market has emerged. Companies in this market buy the right to receive a portion of the future scheduled payments in exchange for a current lump-sum payment to the claimant.

Are Structured Settlements Common?

Historically, personal injury lawsuits were settled with an upfront, lump-sum payment to the claimant. However, favorable IRS rulings permitted future periodic payments to be received by claimants on a tax-free basis, and this combined with the increasing number and size of jury awards in personal injury cases has led to a growing number of structured settlements. It is estimated that over $50 billion in structured settlements are currently being paid to injury victims, and approximately $5 billion in new structured settlements are created each year.

Who Receives Structured Settlements?

Structured settlements were originally intended for use in catastrophic injury cases, where victims suffered long-term disabilities and damages were measured in the millions of dollars. In the early years, a structured settlement provided steady income to those unable to work or care for themselves.

In recent years, however, insurers have used structured settlements in all forms of personal injury cases. Often, claimants are persuaded to accept structured (rather than cash) settlements before they've retained counsel. Also, it has become common for insurers to structure personal injury settlements even where the claim is relatively small and the claimant is perfectly able to work and care for himself or herself. In such cases, structuring settlements has less to do with protecting the victims than enhancing the casualty insurer's return. In many cases, forcing claimants to wait for their money — even when their financial circumstances change — imposes needless hardship.

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NASP

Don't Settlements Cost The Same, Whether Paid In A Lump Sum Or Structured Over Time?

No. A settlement paid over time costs an insurer much less than a like amount paid in cash upfront. Insurers know that a dollar to be paid in the future costs less than a dollar to be paid today. In short, the net present value of a future (face value) payment stream is significantly less than that future value.

The following is an outline of a typical structured settlement.

> Mary settled her personal injury claim on January 1, 1995 in exchange for a promise of payments in the future. These payments will be made at the rate of $500 per month guaranteed for 20 years (240 months) and 4 lump-sum payments as follows: $20,000 due Jan. 1, 2000; $25,000 due Jan. 1, 2005; $30,000 due Jan 1, 2010 and $40,000 due Jan 1, 2015. The insurance carrier tells Mary that she is getting a $235,000 settlement ($500 x 240 plus the lump sums). However, the carrier doesn't pay $235,000 because the settlement isn't really that large. The actual value of the settlement is its "present value." Assuming a discount rate of 10% per year, which is in line with the combined rate and fees charged by annuity providers, the entire settlement is really only worth $85,400.

The further in the future you are scheduled to receive a sum of money the less it is worth today because of inflation and cost of living increases. Thus, no matter what the source, structured settlement payments, lottery prizes or other types of annuity, inflation will make the value of the payments shrink in coming years. Just look at what inflation has done over the past 34 years:

Average Prices	**1964**	**1998**
Salary	$6,080.00	$35,492
New House	$13,050.00	$110,590
New Car	$3,496.00	$20,756
Gallon of Gas	$.30	$1.03

Moreover, when an insurer is able to delay payment through a structured settlement, it can earn double-digit returns on the money it gets to hold — sometimes for decades. For this reason, structured settlements are often "back-loaded" (see glossary) with the smaller payments made first and the bigger dollar amounts paid out later.

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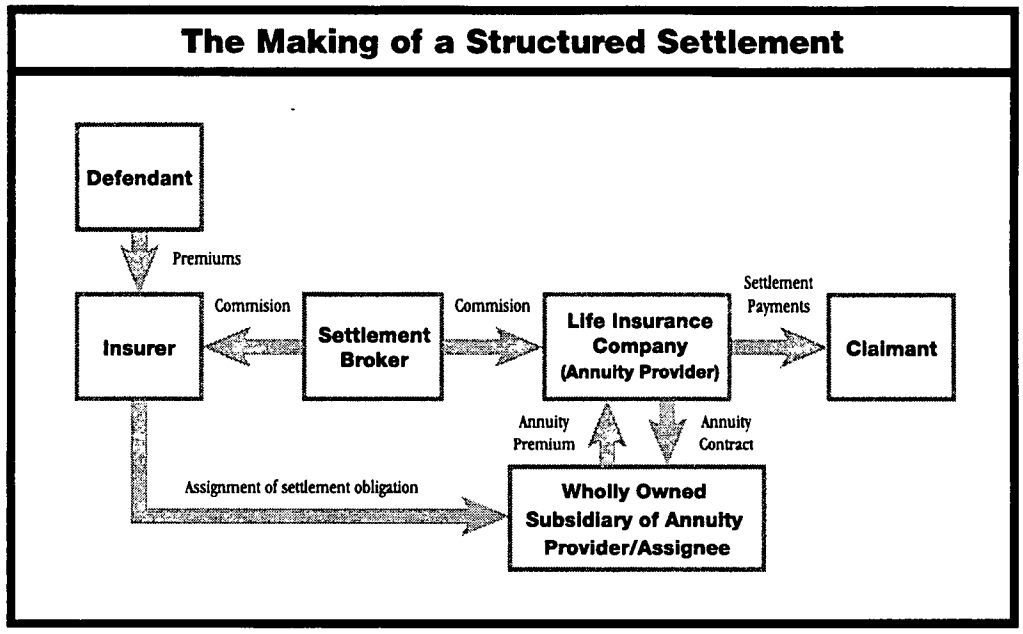
How Does A Structured Settlement Work?



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NASP

Who Benefits From Structured Settlements?

Accident victims **should** be the ones to benefit when a settlement is structured. Unfortunately, that is often not the case. The following are the key players and their specific interest.

Property & Casualty Insurers: Consumers who settle personal injury claims are sometimes told that the award must be paid out over time. In substance, they get a take it or leave it offer from the defendant, usually a property & casualty insurer. When presented with a choice of upfront cash or what appears to be a much larger amount paid over time (structured settlement), consumers usually are not provided the information they need to compare the upfront cash offer with the future payments (structured settlement offer). There is certainly no legal requirement that insurers disclose the true present value of their offers, nor is there even a requirement that consumers be told to consult with counsel before making a choice. Under current law, insurers can offer $100,000 paid in small installments over the course of 30 years and label it a $100,000 settlement offer. Obviously, insurers hope they can settle their cases cheaply if accident victims believe that they are getting larger awards.

Settlement Brokers: A small group of settlement brokers earn commissions on every settlement they structure. These brokerage companies earn tens of millions of dollars every year in setting up structured settlements — without ever disclosing their commissions to the claimants or claimant lawyers. There are no regulations governing settlement brokers beyond that applied to any life insurance agent. In addition, their only training is provided by the trade association (National Structured Settlement Trade Association) set up to perpetuate the growth and increased use of structured settlements..

Annuity Providers: Usually an "A" rated U.S. life insurance company, annuity providers agree to make the settlement payments to the claimant in return for a lump-sum cash "premium" from the respective casualty insurer. The provider agrees to make periodic payments to the claimant based on the schedule of payments negotiated by the settlement broker with the claimant. By transferring the payment obligation, the casualty insurer is released from all liability to the claimant. The annuity providers profit by holding and investing the lump-sum premium payment they get from casualty insurers, earning returns well in excess of the amounts paid to the claimants.

Claimants: In many cases, settlement structures provide a crucial financial stream to pay for the living and medical expenses of seriously injured tort victims who are unemployable. However, most claimants prefer a lump-sum payment that offers them the flexibility to use in a manner that best fits their individual needs.

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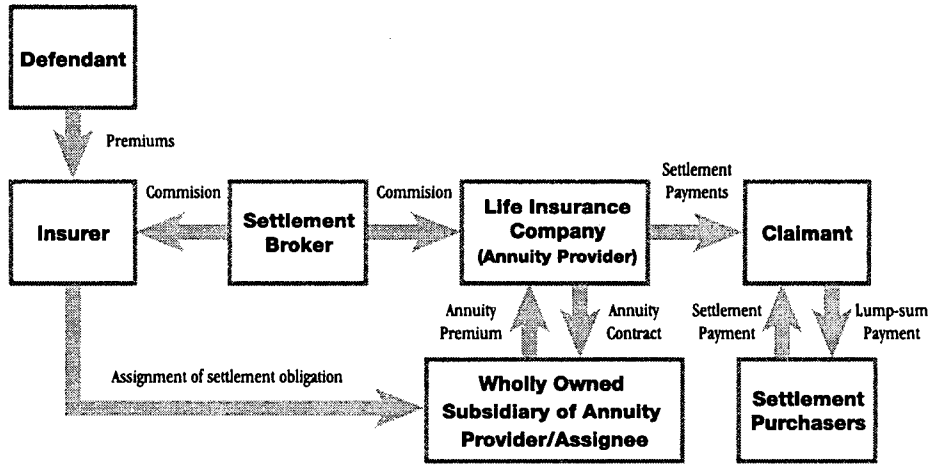
What Role Do Settlement Purchasers Play?

Tens of thousands of people are now receiving structured settlement payments. Many want to convert their payments to upfront cash, but are impeded by doing so by insurers. That's where settlement purchasing plays a role. The recipient of a structured settlement can sell all or part of his or her future promised payments to a settlement purchaser for a lump-sum payment in cash.

Every year, thousands of people sell part of their long-term personal injury settlement to settlement purchasing companies. The money they receive may be used to improve a home, fund a child's college education, start a small business, pay medical expenses, repay debts, or deal with an unexpected life change such as a divorce or job loss. For those consumers, the ability to sell some or all of their future payments provides flexibility to meet pressing financial needs with money that ultimately belongs to them.

How Does The Structured Settlement Process Work?

The Making of a Settlement Purchase



A structured settlement recipient may need $15,000 to pay for a prosthetic limb and will choose to sell a portion of his monthly settlement payments in exchange for $15,000 cash. The purchaser and seller will calculate the number of periodic payments to be exchanged in return for a lump sum of cash. Assuming an agreement is reached, the claimant simply transfers the "right to receive those payments" to the settlement purchasing company in exchange for a lump-sum cash payment.

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Does A Settlement Purchase Affect The Insurance Companies Or Others Involved?

No. A claimant sells the rights to receive specific payments, which in no way affects payment of the settlement. The same monthly installments are simply sent to a different address. The timing, frequency and amount of the payments do not change.

Yet, a powerful segment of the insurance industry is fighting to deny this option to claimants through a number of activities:

- refusing to honor the claimants payment and change of address instructions;
- refusing to follow court orders directing insurers to honor a purchase agreement;
- redirecting payments to a claimant's former address to prevent settlement purchasers from receiving payments;
- sponsoring legislation to ban settlement purchasing or to tax it out of existence.

Ultimately, these tactics are hurting the people who most need help: America's personal injury victims.

Why Do Insurers Care If Accident Victims Sell Their Structured Settlements?

Insurance companies claim that they are trying to protect consumers from "bad deals." Incredibly, insurers now claim to be acting as consumer advocates for personal injury victims. These are the same victims they have opposed in litigation and, in some cases, urged not to seek legal counsel when structuring the original settlement. They claim that settlement purchasers charge too much when they buy a payment stream. This simply is not the case.

On average, the discount rates charged are comparable with credit card interest rates. But, with a definite advantage over credit — once the consumer has traded future payments for upfront cash, nothing more is owed. Also, it is important to remember that these periodic payments are not without risk — recently Executive Life and Confederation Life, two of the largest settlement annuity providers, failed financially affecting thousands of claimants.

Ironically, many of the insurers who oppose structured settlement factoring are themselves affiliated with consumer finance or factoring companies that charge similar interest rates. Additionally, many insurers purchase the securitized portfolios of purchased settlements when they are sold on Wall Street.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

Why Is One Segment Of The Insurance Industry Trying To Put Settlement Purchasers Out Of Business?

Some insurance companies see settlement purchases as a threat to their very lucrative business of structuring settlement obligations that otherwise would have to be paid upfront. They know that settlement purchases highlight the inflexibility of the fixed payment plans that the insurers hope to sell to (or impose upon) future accident victims.

People who decide to sell their settlements at a discount are living proof that the inflexible schedule imposed by structured settlements often fail to meet consumers' changing needs. Through settlement purchases, consumers are learning that the present value of their settlements is a lot less than what they may have been led to believe. No doubt, the insurance industry is concerned that as more and more people (and lawyers) begin to learn how structured settlements really are being used to enrich insurers and their brokers at the expense of accident victims, fewer claimants will agree to accept settlements that are paid over time. Otherwise, they and their attorneys will negotiate much stronger and equitable settlements in the future.

Is The Settlement Purchasing Industry Regulated?

Settlement purchasing is regulated in some states. In several others, the National Association of Settlement Purchasers (NASP) and its members are working with state legislators to enact new regulatory proposals.

NASP members operate under specific self-regulatory by-laws which prohibit buying settlements from:

- minors;
- claimants who have been declared legally incompetent, or guardians (unless under court order);
- claimants depending on future payments for a medical treatment;
- claimants who are unemployed or unemployable and whose payments are their only income.

Under NASP's regulatory proposals, all settlement purchase agreements would be subject to these restrictions.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

What Kind Of Legislation Is The Insurance Industry Promoting?

A segment of the insurance industry seeks to ban the sale of structured settlement payments. Some of the insurers' legislative proposals would make it illegal for a claimant to sell a structured settlement payment without the insurer's express written consent — even if the sale has been reviewed and approved by a court of relevant jurisdiction. Other proposals would impose punitive taxes on sales transactions.

If this type of legislation is passed, the real losers will be the tens of thousands of personal injury victims who would lose the valuable option of converting inflexible and potentially risky periodic payments to cash.

Where Does the National Association of Settlement Purchasers (NASP) Stand On The Issue?

NASP believes that consumers ought to have the right to choose whether or not to receive a lump-sum or a structured settlement payment. This choice should always be there, during settlement negotiations and years later. Claimants who decide to receive a structured settlement should have the right to sell that payment, not be forced to continue with inflexible and potentially risky periodic payments that don't meet their needs.

That's why NASP has sponsored legislation which provides major safeguards for consumers and protects their right to make their own financial decisions.

This legislation will better define and regulate the practice of settlement purchasing and that's good news for everyone — consumers, insurance companies and the settlement purchasers. Under this model legislation:

- the claimant must be informed of the present value of any structured settlement;
- settlement purchase agreements must include a good faith estimate of the net amount payable to the claimant as well as all brokers' commissions, service charges and costs;
- the claimant must be represented by an attorney during both the creation of the original settlement and during the settlement purchase negotiations;
- the claimant shall have the absolute and irrevocable right to rescind and cancel the settlement purchase agreement within three days.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

Annuity Provider

The life insurance company (or casualty insurer) that sends the structured settlement payments to the claimant.

Back-loading

In a structured settlement, the practice of paying larger monthly installments later in the settlement. The claimant typically receives smaller payments at first, with the big dollar payments paid out in later years. Back-loading is one way to make a structured settlement appear to be worth more than it really is.

Claimant

A person who files a claim as a result of an accident or a personal injury.

Casualty Insurer

The company that insures the party being sued, defends the claim and enters into a settlement agreement with the claimant.

Settlement

The promise made by the insurer to pay a lump sum or future schedule of payments to an accident victim when a personal injury claim is resolved.

Settlement Purchase

The practice of acquiring the right to receive future payments due under a structured settlement in exchange for a lump sum of cash.

Structured Settlement

A series of periodic payments made over time in the settlement of a personal injury or wrongful death claim.

Facts about Structured Settlements

- Each year some 50,000 Americans receive tax-free "structured settlements" for personal injury claims in place of single, lump-sum payments — that's about $5 billion in structured settlements each year.
- More than 50% of the structured settlements set up each year have a present value of $30,000 or less.
- Over the past 15 years, structured settlements have totaled more than $50 billion.
- An average structured settlement continues over a 20-year period and cannot be altered regardless of changes in the recipient's needs or life circumstances. That's where settlement purchasing fits in.

Facts about Settlement Purchasers

- Settlement purchasers buy the right to receive a specified amount of structured settlement payments in exchange for a lump sum of cash. The rights to specified payments are simply transferred to the settlement purchasing company.
- For consumers, the ability to sell their future payments provides flexibility. They receive the money they need, when they need it, for any number of reasons: medical emergencies, pay tuition or taxes, start a business, or repay a debt.
- Eighty-eight percent of settlement purchases are partial purchases. In other words, only a part of the settlement is sold. The claimant retains the balance of periodic payments.

Facts about People Selling Their Structured Settlements

- The average seller is 33 years old, employed and has an annual household income of nearly $25,000.
- Over 85 percent of structured settlement claimants are NOT DISABLED and are gainfully employed.
- Thirty-four percent of claimants use the money to buy a home; 31 percent pay off existing debts or pay for education; and 16 percent open or expand a business with the money.
- Ninety-two percent of claimants are "satisfied" or "very satisfied" with the refinancing they were able to accomplish with the help of the settlement purchasing industry.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

re Structured Settlements Intended To Protect People Who Cannot Protect Themselves?

Not anymore. That may have been the original intent. However, the economic benefits to insurance companies have resulted in a wider use as evidenced by the over $5 billion in annual premiums generated by such arrangements. Only a tiny fraction of these settlements are for persons who cannot protect themselves. Further, NASP members are in favor of rational regulation to protect such individuals.

The following facts reflect what NASP believes to be representative of the settlement market today:

- The average seller is 33 years old, employed and has an annual household income of nearly $25,000.
- Over 85 percent of structured settlement claimants are NOT DISABLED and are gainfully employed.
- Thirty-four percent of claimants use the money to buy a home; 31 percent pay off existing debts or pay for education; and 16 percent open or expand a business with the money.
- Ninety-two percent of claimants are "satisfied" or "very satisfied" with the refinancing they were able to accomplish with the help of the settlement purchasing industry.

Whatever policy considerations may support structured settlements of personal injury claims in the first instance, no such policy should preclude claimants from revisiting this choice if their circumstances change. The secondary market has evolved to meet the financial and social needs of claimants as their life circumstances change. Settlement purchasers are simply purchasing a portion of the settlement so that a lump sum is available to meet the needs of the claimant.

Moreover, virtually every structured settlement purchase transaction is a "partial purchase," where only a fraction of the settlement has been sold. The claimant retains the balance of the periodic payments.

The assumption that claimants are incapable of making reasoned financial decisions if provided full information is unsupportable. The vast majority of claimants are competent to handle their own financial affairs and do so in all other contexts. These individuals understand the need for cash immediately and how much they will "hold in reserve" for the future. In virtually every case, the claimant only sells enough of the future payments due to solve their immediate financial needs.

NATIONAL ASSOCIATION OF NASP SETTLEMENT PURCHASERS

Do Settlement Purchase Companies Use Inappropriate Marketing Techniques?

No. Informational advertising and marketing is conducted to let claimants know that there is a choice available. None of the members of NASP make cold-calls to claimants. In virtually every purchase transaction it is the claimant or the claimant's counsel who initiates the contact with the settlement purchase company. The companies follow up on such calls to begin an application process that contains numerous underwriting safeguards for claimants. At the end of the process, claimants are again offered a right to change their mind for any reason at no cost or obligation. Settlement purchase companies' marketing techniques compare favorably to the techniques of the consumer finance industry.

Are The Discount Rates For Settlement Purchases Too High?

No. The discount rate applied in the majority of cases ranges from 18 to 21 percent. These rates compare to those offered in standard credit card borrowing and those offered by consumer finance companies and credit card issuers. Further, one of the factors keeping rates high is the legal impediments raised by opponents of structured settlement purchases in various state legislatures and court proceedings. Creating a framework of legal and financial predictability is the surest way to bring rates down.

The evolution of the lottery purchasing industry serves as a powerful example. Almost 20 states now permit the free assignability of lottery annuities. Prior to the enactment of legislation explicitly authorizing such transactions, discount rates were typically in the high teens. As soon as legal uncertainties were removed, rates fell to single digits. Similarly, a bankrupt state insurance pool in New Jersey deferred payments of personal injury awards and attorney fees. The purchase of these obligations started at high rates (25–30%). After the state established a procedure for processing assignments and assured investors that properly assigned claims would be paid directly, rates dropped to 10–12%.

If Congress or state legislators are concerned that current rates are too high, they should note that the imposition of any new taxes would increase the discount rate and would be counterproductive.

The surest way to increase the amounts provided to the intended beneficiaries is to require adequate consumer protection in all phases of the structured settlement, including the original structured settlement and the subsequent transfer of payment rights. Beneficiaries should be informed of the values and settlement options at the time of the original settlement so that they are less likely to be lulled into settlements that do not meet their needs and put at the mercy of unscrupulous refinance companies. As with the lottery example, consumer protection should include required cooperation between the companies making the settlement payment and any companies involved in transfer of payment rights.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

Will A Sale In The Secondary Market Expose Claimants To Additional Taxes?

NASP believes not. The federal tax rules reflect Congressional recognition that in order to receive periodic settlement payments as tax-free damages, a recipient must not be in constructive receipt of the annuity contract or the value of the contract. Ownership of the contract that backs the settlement is vested not in the individual, but in an insurance company or affiliate. Sale of structured settlement payments raises no constructive receipt problems and should not result in taxable income to claimants as they are simply receiving personal injury damages that are excludable from income. The settlement purchase companies are seeking confirmation of these conclusions from the Internal Revenue Service and have invited structured settlement providers to join in this effort.

Do Settlement Purchase Companies Support Consumer Protection?

Yes. Settlement purchase companies strongly support and are actively seeking consumer protection legislation to regulate structured settlements and secondary market transactions. Indeed, member companies have been actively working through NASP at the state level to pass comprehensive legislation to protect the interests of personal injury victims at the time of settlement and, subsequently, should they sell a portion of their settlement. The association is working with a number of state legislatures, which are presently debating the adoption of NASP's model legislation.

Interestingly, the Joint Committee on Taxation in its analytical description of the proposed new excise tax noted that it "could also be argued that it is not the function of the tax law to prevent injured persons or their legal representatives from transferring rights to payment. Arguably, consumer protection and similar regulation is more properly the role of States than the Federal government." The Joint Committee further notes that "on the other hand, the tax law already provides an incentive for structured settlement arrangements, and if practices have evolved that are inconsistent with its purpose, addressing them should be viewed as proper."

NASP would welcome adoption of standards to assure the adequate disclosure of the present value, fees, and commissions, both at the time that structured settlements are established and at the time of secondary purchase. NASP offers its model legislation as the best method for making this consumer protection standard a part of federal or state law.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

tax policy statement

NASP **strongly opposes** any tax on the purchase of a structured settlement arrangement. New taxes would limit the freedom of individuals to arrange their financial affairs as they choose, while achieving no tax revenue generation as purchasers would leave the marketplace. Any tax proposal is based on several erroneous assumptions. In fact, it would:

- **Penalize those who can least afford it.** The majority of structured settlement purchases are from individuals receiving small periodic streams not arising out of catastrophic injury. These individuals will be forced to bear legal fees or a punitive tax to receive lump sums.

- **Eliminate consumer choice.** The average length of a structured settlement is 20 years, during which time situations arise that can create an immediate need for cash, often unanticipated at the time the structured settlement was established. Individuals should be able to access their settlement as life circumstances change, enabling them to among other things:

  - meet educational or medical needs
  - start a business;
  - pay off debts;
  - offset a job change, divorce, death, or serious illness; or
  - pass assets to children and spouses and avoid estate tax and probate problems.

- **Deny access to financing sources.** Individuals who access structured settlements payment streams are often those without access to credit. Imposition of any tax will eliminate this financing source for those most in need of capital.

- **Punish rather than protect consumers.** People who receive structured settlements and then later sell them deserve full and complete disclosure in order to make informed choices. Settlement purchase companies that are members of NASP have urged state legislatures and Congress to consider real consumer protection throughout the structured settlement process. NASP believes that consumer protection should be provided both at the time structured settlements are established and at the time of secondary purchase. A punitive tax is no substitute for information and free choice.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

- **Impose an unfunded state mandate and needless additional burden on State Courts.** A large majority of all structured settlements are developed without a court proceeding. The Administration proposal mandates a special court procedure in order to avoid the new tax in cases of life or death. This new procedure does not exist in any state currently and, in essence, would be a new unfunded mandate.

- **Represent inappropriate intrusion into an industry dispute.** A few companies in the insurance industry fear that a vibrant secondary market where individuals can chose to liquidate a portion of their structured settlement payments may cause claimants or plaintiff attorneys to reconsider the wisdom of putting clients in structured settlements in the first place or make them much more knowledgeable about the net present value of the settlement offer they are considering.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
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It wasn't until Tennessee resident **Tarron B.** (Knoxville, TN, 21) needed a down payment for a home that she considered a relatively new option for raising cash. Seventeen years ago, when Tarron was four years old, she suffered a broken leg, neck injuries and multiple fractures in an auto accident, and since then she has been paid annual payments. She decided to sell her payments to a company that specializes in "settlement purchasing" in exchange for cash. Today, Tarron is a proud homeowner. Following are others like Tarron, for whom settlement purchasing has meant all the difference in the world.

Dwight F. (Brooklyn, NY, 30) had been in and out of the hospital for a total of ten surgeries because of injuries he suffered in a motorcycle accident. Since he was unable to work consistently he fell behind on his child support obligations. Wanting to provide for his children and satisfy his past due obligations, he sold a portion of his monthly payments. By selling a portion of his monthly payments, Dwight was able to provide for his children and pay off his high interest loans.

In 1974, **Savane W.** (Fort Wayne, IN, 33) lost his legs in a train accident when he was 10 years old. His family accepted a structured settlement, affording him a lifetime of monthly payments. Twenty-five years later, Savane remained homebound and jobless. He wanted to start his own business and replace his aging prosthetic limbs, but lacked the cash to do so. The insurer refused to pay any sooner. In three separate transactions, he agreed to sell portions of his future payments in exchange for cash, keeping monthly annuity payments in an amount sufficient to meet his living and medical expenses. With the proceeds of his first sale, he paid for the repair of his aging prosthetic limbs; with a second sale, he converted his basement into a small commercial print shop; and when his business grew, he sold another portion of his payments to purchase a handicap-accessible van to handle pick-ups and deliveries.

After losing her leg in an auto accident, 17 year-old **Irene H.** (Prospect, CT, 33) agreed to a $210,000 structured settlement that would be paid in monthly installments over time. Fifteen years later, Irene's needs changed. In order to support her family, the single mother wanted to go back to school. She also needed a new prosthetic limb. But, under her current settlement plan, she wouldn't receive the money until 1999. With nowhere else to turn, Irene decided on a settlement purchase, selling a portion of her future payments for a lump sum of cash. Today, Irene has returned to school, satisfied debts and purchased a new artificial limb.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
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In 1987, **Robert G.** (Clay City, KY, 50) was injured in a truck accident and received a $9,000 a year structured settlement. Ten years later, Robert was without a job, and wanted to start his own business. All he needed was a new truck, but he didn't have enough money to buy one. Unable to convince his insurance company to advance his settlement payments, Robert sold a portion of his future payments to a settlement purchasing company in exchange for the cash he needed for the truck. Robert now owns his own business, and makes $40,000 per year driving the truck he bought through settlement purchasing.

The double burden of newborn twins and the loss of his job left **Anthony D.** (Wallingford, CT, 28) with large debts and a mortgage default that threatened his family home. Anthony wanted to use money from the remaining payments of a structured settlement he had received ten years ago because of an accident. Even though his insurance company refused to provide him with the money from future payments, Anthony was able to use the money to save his home. He simply sold his remaining payments to a company specializing in settlement purchasing. Today, Anthony not only has a home, but he has used the remaining money to return to school where he is now training for a new job.

Gilbert H. (Chicago, IL, 41) needed cash to expand his auto body shop and buy equipment which complied with new environmental regulations. Injured on the job several years prior, Gilbert had been receiving monthly payments as settlement for his claim. Despite the steady stream of income, banks would not accept these payments as collateral for a loan. Gilbert sold a portion of his future payments to a settlement purchasing company. Today, Gilbert H. was able to expand his business, purchase a rental property, pay his daughter's tuition, and purchase health insurance for his family.

As a teenager, **Dale A.** (Chaffee, NY, 33) had been injured in a car accident. Since then, he has received monthly payments from an insurance company as part of his structured settlement. Recently, however, Dale needed money to purchase a home. By selling a portion of his future settlements, Dale was able to close the sale and is now the proud owner of a new home.

NATIONAL ASSOCIATION OF NASP SETTLEMENT PURCHASERS

In 1996, **Edwin S.** (Pulaski, VA, 38) needed cash to build a wheelchair-accessible home. He had been severely injured in an auto accident ten years earlier and has been in a wheelchair ever since. His insurer would not pay him any of the monthly payments he receives as part of his accident settlement, and Edwin was certain he would not be able to secure the funds for the home. With the help of settlement purchasing, however, Edwin built the house and used with the balance to start a small business.

Settlement purchasing provided **Gail A.** (Merrick, NY, 41) with the money she needed to pay her property taxes, save her home, and resolve her other debts. Gail had received the structured settlement from a car accident that caused her to suffer from a herniated disc and shoulder injuries. Gail had hoped to convince her insurance company to provide her an advance on the monthly payments, but when they said no, she turned to settlement purchasing as the solution to her financial difficulties.

Johnell M. (Pineville, LA, 44) broke his back in a machinery accident. After 2 years of physical therapy and rehabilitation, he agreed to a structured settlement of monthly payments for life. Johnell's marriage proposal in 1997 put an unexpected burden on his finances. He needed cash to pay off his debts and to buy the home he was currently renting. In order to do this under his structured payments, Johnell would have had to wait nearly five years to get married. Unwilling to postpone his marriage, Johnell sold a fraction of his settlement, using the money to pay off his debts and buy a car and a home.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

consumer bill of rights

1. You have the right to know the exact amount you are to receive in exchange for your transfer of payment rights;

2. You have the right to know the discount rate applied to your transaction;

3. You have the right to consult with your counsel of choice at any time regarding your transaction;

4. You have the right to know the exact amount of all commissions, fees and other charges to be incurred by you in connection with your transaction;

5. You have the right to cancel your agreement to transfer your payment rights for any reason within three (3) business days of the date you receive payment;

6. You have the right to know about any penalty provisions, including claims for liquidated damages, in the event of a breach by you of your transfer agreement;

7. You have the right to choose whether or not to transfer your payment rights at any time.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

NASP code of ethics

Be it resolved, that the NASP shall adopt a code of ethics for its members. All members shall:

- observe high standards of commercial honor and just and equitable principles of trade;
- comply with all laws governing the member's operations, and shall conduct its business so that the member deserves and receives recognition as a good and law abiding citizen;
- be accurate and complete in its contract negotiations with prospective customers;
- not engage in any unfair methods of competition; and
- not take any unfair advantage of a prospective customer, and shall insure that the prospective customer is legally capable of entering into the transaction contemplated.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

Visit the NASP website at www.thenasp.org

Facts about the National Association of Settlement Purchasers

- NASP is a non-profit trade association formed in 1996 by settlement purchasing companies to promote the industry and establish ethical and professional standards of conduct for the industry.
- NASP members support regulations to define our industry's services and scope, instill consumer confidence, and validate our products.
- NASP has developed model legislation which provides major safeguards for consumers and is encouraging states to adopt these or similar regulations into law.
- NASP has specific guidelines governing the sale of settlements. Member companies will not buy from:
  - minors, people who have been legally declared incompetent, or guardians (unless under court order);
  - people who have been legally declared incompetent or guardians (unless under court orders);
  - people who depend on future payments for a medical treatment;
  - the unemployed or unemployable whose payments are their only income.

NASP Mission Statement

Under the terms of its bylaws, NASP's mission is to:

- establish procedures for protecting its members against fraud;
- establish ethical and professional standards of conduct for the industry;
- increase awareness of the industry and its services;
- represent and coordinate the industry in matters of legislative and legal importance;
- serve as the voice of the industry;
- gather and maintain statistical information about the industry;
- gather and disseminate information of general importance to its members;
- educate structured settlement recipients, their attorneys or representatives, purchasers, and brokers about acceptable industry transaction methodologies and risks including a better understanding of customer needs, underwriting standards, proper legal processes and procedures for securing a transaction, and legal and information materials available to participate in the industry.

NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS
NASP

How Insurers Abuse Structured Settlements

The attached are examples of structured settlements. These example show how, when they are being set up, the insurance industry abuses them and how the true economics of a structured settlement are buried, hidden and obscured to make them seem more appealing to the plaintiff lawyer and his client[1].

Exhibit: **Explanation/Comments:**

1. Examples of actual insurance company settlement documents showing the amount they paid for the annuity and the future value of the settlement. This is why structured settlement "seem" like a great deal for the claimant when they are really a great deal for the insurer.

2. Attorney accidentally took his fee on the future value of the settlement.

3. Christy's proposal states that the value of the settlement is $222,000. In fact discounted at 10% it is really worth only $140,000 an overstatement of more than 58% !

4. The proposal for Rose states that the value of $630.89 per month for 240 months is $151,413. Discounted to present value at 10% per annum it is only worth $63,000 - an overstatement of the value of more than 140% !!

5. The Mr. & Mrs. Gibbons settlement proposal says that they are guaranteed $830,000. However, the real economic value of the guaranteed portion of the settlement is half that amount !!!

6. This settlement agreement wrongly set forth the settlement values suggesting that the client is settling for over $413,000 when in fact the settlement is a mere $129,000.

The settlement foisted on this 19 year old accident victim tells her the settlement is worth $1,594,918 when in fact, it is only worth $341,166 in present value - this settlement proposal overstates the true value of the settlement by an astounding 367.4 % !!!

8. The settlement proposal for Kimberly sets out the actual cost of the annuities being purchased. With this information we can see that the yield she is receiving on the annuities purchased is a miserly 3.452% for the monthly annuity and 4.253% for the one paying the lump sum whereas, in 1993, United States Treasury Bonds were yielding over 7%.

9. Here again, due to lack of information, the attorney over-charged his client by taking a fee on the entire future value of the settlement.

10. This comparison is so utterly misleading and incorrect as to need almost no commentary. First, yields on U.S. Treasury securities at the time (7/'93) were over 7%. Thus, the annual payment would have been closer to $46,800. Second, the tax code specifically allows one to fund a structured settlement with U.S. Govt. securities - thus there would be no taxes due ! Third, A U.S. Govt. bond is risk free whereas, an a commercial annuity has default risk (see First Executive Life, Mutual Benefit Life, Confederation Life, etc.).

11. As a result of the death of her father, a structured settlement was used to provide for the care of Bobbyjo Plank (12 years old at the time). It provides her monthly payments of $2,250. However, they don't start until 43 years latter !!! The true value of this settlement discounted at a mere 5% is less than $64,000. How, pray tell, was this structured settlement designed to care for her ???

More examples available upon request.

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[1] Over 20% of all structured settlements involve clients with no attorney representation !

United Pacific Life Insurance Company
One Penn Center
Philadelphia, PA 19103

Quote Date : 08/25/1992
Quote Id :

Structured Settlement Illustration

Benefit Cost Summary for DONALD CRAWFORD

Sex: Male DOB: 01/23/1942
Age: 51 Rated Age: 51
Owner's State : OH, 0.00% Tax

Purchase Date : 09/06/1992
Rate Series : U036
Effective Date : 08/25/1992

Benefit Type and Duration		Amount and Mode	Premium Incl 0.00% Tax
Certain with Life	11/01/1992-10/01/2022 (30 yrs 0 mos)	$125 M	$19,758
			$19,758
	Case Fee.....		$300
	Total Cost		$20,058

* This is an illustration only and is subject to approval by United Pacific Life Insurance Company. Actual rates used will be those in effect on the date premium is received. United Pacific Life Insurance Company will not be bound by any improper quote.

Prepared by : Structured Benefits

UPL03

Reliance

STRUCTURED SETTLEMENT NOTICE

Claim Number: 030-77-04392	Policy Number: WC 574 7431	Handling Claim Office Code: 127	
Claim Caption: Claimant: Donald Crawford vs. Insured: Central Kentucky Sup.			
Technician Last Name: Mellott Initial: K	Work Station Number: 590	Line of Business Code: WCP	
Date of Loss: 08/10/76	Date Reported to Reliance: 08/16/76	Date Settled: 08/25/92	
Broker Name: Structured Benefits, Inc		Broker Code: 04	
Life Company Name: United Pacific Life		Life Company Code: 01	
Cash Payment: $ 20,000 —	Annuity Premium: + $ 20,058.00	Total Settlement Cost: = $ 40,058.00	
Reserves at Settlement (Gross, All Subfiles Settled): $ 173,926.00	Projected Payout: $ 176,926.00	Last Settlement Demand: $ NA	
Rate: ☒ Standard ☐ Substandard	Assignment Taken: ☐ Yes ☒ No	Suit Filed: ☐ Yes ☒ No	Claimant Attorney: ☐ Yes ☒ No
Date of Last Expected Payment: 11/01/2017	Original Documents Attached: ☐ Annuity ☐ Assignment (if any) ☐ Release/Court Approval		
Today's Date: / /	Signed:		

LC-6678 Ed. 7/89 WHITE—H.O. Claims YELLOW—Claims Finance/Systems PINK—Claim File

Exhibit 1

SAFECO

APPLICATION
SINGLE PREMIUM IMMEDIATE ANNUITY

ATL

SAFECO LIFE INSURANCE COMPANY
SAFECO PLAZA
SEATTLE, WASHINGTON 98185

1. Proposed Annuitant

(a) Perry G. Abernathy
First Middle Last

(b) 2569 Carter's Gin Road
No. Street

(c) Toney, AL 35773
City and State ZIP Code

(d) Date of Birth 03 / 25 / 59 ☐ Female ☒ Male
M D Y

(e) Social Security No.: 421-92-2512

2. Joint Annuitant (if any)

(a) _____
First Middle Last

(b) _____
No. Street

(c) _____
City and State ZIP Code

(d) Date of Birth / / ☐ Female ☐ Male
M D Y

(e) Social Security No.: _____

(f) Relationship to Proposed Annuitant _____

Owner, If Other Than Proposed Annuitant, is:

(a) Aetna Casualty & Surety Co.
First Middle Last

(b) P.O. Box 30109
No. Street

(c) Tampa, FL 33630
City and State ZIP Code

(d) Owner is ☐ Individual ☒ Corporation ☐ Partnership ☐ Trustee

4. Plan Applied for

(describe benefits to be paid and dates to commence, attach an additional sheet if more space is required.)

$1,870.00 per month for 120 months guaranteed beginning on 3-2-2020.

5. ☐ Check if additional sheet is attached.

6. Beneficiary

The Estate of Perry G. Abernathy
First Middle Last Relationship

7. Do you intend the replacement or change of any of your existing life insurance or annuity policies in connection with this application for an annuity?
☐ Yes ☒ No

For Home Office Use Only

Note: ***It is essential that an authentic record of annuitant's birth be submitted prior to the first annuity payment: A birth certificate, if available; otherwise a certified copy of church or baptismal record, or certified copy of family record, such as reference to annuitant in family Bible.***

I (We) represent that the statements and answers recorded on this application are full, complete and true, to the best of my (our) knowledge and belief, and shall form a part of the annuity contract issued hereon, and my (our) acceptance of such annuity shall constitute my (our) ratification of any additions, corrections or changes made in the space provided "For Home Office Use Only." The owner of this annuity will be the applicant. Application is made with the knowledge and consent of the proposed annuitant. I (We) agree that any annuity contract issued upon this application shall be considered a contract of the State in which this application is signed by the applicant and its terms shall be construed in accordance with the laws of that State.

Agent: To the best of your knowledge, does the annuity applied for replace any other annuity or life insurance presently in force? ☐ Yes ☒ No

Robert D. Reid, CLU
Signature of Agent

Structured Benefits of Fl, Inc. 10-96-0668
Agency Stat #

Tampa, FL 3/9/90
Dated At (City, State) On (Month Day)

Tampa, FL 3/9 1990
Dated At (City, State) On (Month Day)

X _____
Signature of Applicant

X Mgr.
Title

* If applicant is corporation or partnership, a corporate officer other than proposed annuitant must **sign** and **state title.**

Exhibit 1

LU-350.2 84

Aetna LIFE & CASUALTY

STRUCTURED SETTLEMENT PAYMENT TRANSMITTAL

AE/ATL

Safeco 3/85

(PLEASE PRINT OR TYPE)

To: Benefits Planning/Structured Settlements - Home Office, D309

Date 3-5-90 - Connie

From: Steve Bair

[X] CID Claim
[ ] PFSD Claim

Telephone No. 205 882-0711

Birmingham Montevallo

CLAIMANT Peggy G Abernathy

DATE OF ACCIDENT 10-1-86

5241 28

(If multiple files - list each file number and amount to be charged to each claim)

CLAIM FILE NUMBER (UNIT/OFF. CODE-CCL-SERIAL NO.-SUFX)	INSURED	POLICY NUMBER (OFF. CODE-SYMB.-SERIAL NO.-SUFX)	POLICY EFFECTIVE DATE (MM DD YY)	ANNUITY PREMIUM (Exclude prior paid advances, liens, front money, and lump sum Attorney Fees)
H76 42 4:2935 RG	Ashburn & Gray	76 CO 863946 CCA	7-1-86	$ 14,107
				$ 13,376
			due to rate change	$

CLAIMANT'S SETTLEMENT (Attach Birth Certificate for each payee receiving a life income or deferred payments based on age. Use additional forms for multiple payees.)

SS# 421-32-2512

PAYEE'S COMPLETE NAME: Peggy G. Abernathy

PAYEE'S DATE OF BIRTH: 3-25-59

PAYEE'S MAILING ADDRESS (Include zip code): 3569 Curtis Gin Road, Toney, AL 35773 (ZIP CODE)

ACCOUNT NUMBER (If sending payment to a bank, payee's account number is required)

DESCRIPTION OF SETTLEMENT - STRUCTURED PORTION ONLY (Example: $300 monthly for life; guaranteed 240 months.): $ 1,870 per month for 120 mos certain

STARTING DATE FOR PAYMENT: 3-2-2020

STRUCTURED ATTORNEY'S FEES

ATTORNEY'S COMPLETE NAME

ATTORNEY'S DATE OF BIRTH

ATTORNEY'S MAILING ADDRESS (Include zip code)

DESCRIPTION OF SETTLEMENT (Example: $10,000 per year for 7 years.):

STARTING DATE FOR PAYMENT

(C-411J-8) 10-83

Exhibit 1

CAT. 629154 PRINTED IN U.S.

Aetna LIFE & CASUALTY

STRUCTURED SETTLEMENT PAYMENT TRANSMITTAL

Dep. 8/25 S8FI Safeco Acct CHICAGO OFFICE (PLEASE PRINT OR TYPE)

To: Benefits Planning/Structured Settlements - Home Office, D309

Date 8-17-87

Lisa Hildebrand CHIC ☐ CID Claim ☑ PFSD Claim

Telephone No. (312) 971-5280

CLAIMANT	DATE OF ACCIDENT
Shamina ABDULLAH	9-5-86

(If multiple files - list each file number and amount to be charged to each claim) [1]

CLAIM FILE NUMBER UNIT/OFF. CODE-CCL-SERIAL NO.-SUFX.	INSURED	POLICY NUMBER OFF. CODE-SYMB.-SERIAL NO.-SUFX.	POLICY EFFECTIVE DATE MM DD YY	ANNUITY PREMIUM (Exclude prior paid advances, liens, front money, and lump sum Attorney Fees)
C208AU73458 93RG	Karim Abdullah	20854 191762 79PCI	4-28-86	$ 6,048
				$
				$

CLAIMANT'S SETTLEMENT *(Attach Birth Certificate for each payee receiving a life income or deferred payments based on age. Use additional forms for multiple payees.)*

PAYEE'S COMPLETE NAME	PAYEE'S DATE OF BIRTH
SHAMINA Abdullah	6-17-80
PAYEE'S MAILING ADDRESS *(Include zip code)* ZIP CODE	ACCOUNT NUMBER *(If sending payment to a bank, payee's account number is required)*

DESCRIPTION OF SETTLEMENT-STRUCTURED PORTION ONLY *(Example: $500 monthly for life; guaranteed 240 months.)*:	STARTING DATE FOR PAYMENT
$ 4,000 4S	6-17-98
$ 4,000	99
$ 4,000	00
$ 5,000	01

STRUCTURED ATTORNEY'S FEES

ATTORNEY'S COMPLETE NAME	ATTORNEY'S DATE OF BIRTH
ATTORNEY'S MAILING ADDRESS *(Include zip code)* OK EB 8-19-87	

DESCRIPTION OF SETTLEMENT *(Example: $10,000 per year for 7 years.)*:	STARTING DATE FOR PAYMENT

Exhibit 1

SAFECO

APPLICATION
SINGLE PREMIUM IMMEDIATE ANNUITY

SAFECO LIFE INSURANCE COMPANY
SAFECO PLAZA
SEATTLE, WASHINGTON 98185

1. Proposed Annuitant

(a) Shamina Abdullah
First Middle Last

(b) _____
No. Street

(c) _____
City and State ZIP Code

(d) Date of Birth 6 / 17 / 80 ☒ Female ☐ Male
M D Y

(e) Social Security No.: _____

2. Joint Annuitant (if any)

(a) _____
First Middle Last

(b) _____
No. Street

(c) _____
City and State ZIP Code

(d) Date of Birth / / ☐ Female ☐ Male
M D Y

(e) Social Security No.: _____

(f) Relationship to Proposed Annuitant _____

3. Owner, If Other Than Proposed Annuitant, is:

(a) Aetna Casualty & Surety Company
First Middle Last

(b) P.O. Box 30109
No. Street

(c) Tampa, Florida 33630
City and State ZIP Code

(d) Owner is ☐ Individual ☒ Corporation ☐ Partnership ☐ Trustee

4. Plan Applied for

(describe benefits to be paid and dates to commence, attach an additional sheet if more space is required.)

4,000 lump sum to be paid on 6/17/98
4,000 lump sum to be paid on 6/17/99
4,000 lump sum to be paid on 6/17/00
5,000 lump sum to be paid on 6/17/01

5. ☐ Check if additional sheet is attached.

6. Beneficiary

The Estate of Shamina Abdullah
First Middle Last Relationship

7. Do you intend the replacement or change of any of your existing life insurance or annuity policies in connection with this application for an annuity?
☐ Yes ☒ No

For Home Office Use Only

Note: ***It is essential that an authentic record of annuitant's birth be submitted prior to the first annuity payment: A birth certificate, if available; otherwise a certified copy of church or baptismal record, or certified copy of family record, such as reference to annuitant in family Bible.***

I (We) represent that the statements and answers recorded on this application are full, complete and true, to the best of my (our) knowledge and belief, and shall form a part of the annuity contract issued hereon, and my (our) acceptance of such annuity shall constitute my (our) ratification of any additions, corrections or changes made in the space provided "For Home Office Use Only." The owner of this annuity will be the applicant. Application is made with the knowledge and consent of the proposed annuitant. I (We) agree that any annuity contract issued upon this application shall be considered a contract of the State in which this application is signed by the applicant and its terms shall be construed in accordance with the laws of that State.

Agent: To the best of your knowledge, does the annuity applied for replace any other annuity or life insurance presently in force? ☐ Yes ☒ No

X _____
Signature of Agent

Structured Benefits of Florida, Inc. 10-96-0668
Agency Stat #

Tampa, Florida August 20, 1987
Dated At (City, State) On, (Month Day)

Tampa, Florida August 20, 1987
Dated At (City, State) On (Month Day)

X _____
Signature of Applicant*

X _____
Title

* If applicant is corporation or partnership, a corporate officer other than proposed annuitant must sign and state title.

LU-350 2/84

Exhibit 1

ADDENDUM

ANNUITANT - Christropher Ryan Grey
* Make check payable to Richard Grey, Guardian of Christropher Grey

Benefit Plan:

$10,000 lump sum guaranteed to be paid on 3/31/1996

$10,000 lump sum guaranteed to be paid on 3/31/1998

$350.00 per month for 60 months guaranteed beginning on 3/31/1998.

$10,000 lump sum guaranteed to be paid on 3/31/2000.

$10,000 lump sum guaranteed to be paid on 3/31/2002.

$12,000 lump sum guaranteed to be paid on 3/31/2004.

$15,000 lump sum guaranteed to be paid on 3/31/2006.

$18,000 lump sum guaranteed to be paid on 3/31/2008.

$20,000 lump sum guaranteed to be paid on 3/31/2010.

$20,000 lump sum guaranteed to be paid on 3/31/2015.

Exhibit 1

Aetna LIFE & CASUALTY

STRUCTURED SETTLEMENT PAYMENT TRANSMITTAL

AE/ATL

(PLEASE PRINT OR TYPE)

Safeco 4/date 5/5/89

Faxed 4:30 5/1/89

To: Benefits Planning/Structured Settlements - Home Office, D309

Date 5-2-89 - Corrected

From: Bill Rogers Tampa,

☐ CID Claim ☒ PFSD Claim

Telephone No. (813) 287-7246

CLAIMANT: Christopher Ryan Frey

DATE OF ACCIDENT: 7-25-88

(If multiple files - list each file number and amount to be charged to each claim)

CLAIM FILE NUMBER UNIT/OFF. CODE-CCL-SERIAL NO.-SUFX.	INSURED	POLICY NUMBER OFF. CODE-SYMB.-SERIAL NO.-SUFX.	POLICY EFFECTIVE DATE MM DD YY	ANNUITY PREMIUM (Exclude prior paid advances, liens, front money, and lump sum Attorney Fees)
W233HC6279F4%	David F. Taylor	22350 178914 02	3-26-88 3-26-89	$ 39,854
AE		PCS		$
				$

CLAIMANT'S SETTLEMENT *(Attach Birth Certificate for each payee receiving a life income or deferred payments based on age. Use additional forms for multiple payees.)*

PAYEE'S COMPLETE NAME: Richard Frey, Guardian of Christopher Ryan Frey

PAYEE'S DATE OF BIRTH: 3-31-80

PAYEE'S MAILING ADDRESS *(Include zip code)*: 3010 Cedar Wood Village Ln. Pensacola, FL 32514 (ZIP CODE)

ACCOUNT NUMBER *(If sending payment to a bank, payee's account number is required)*:

DESCRIPTION OF SETTLEMENT-STRUCTURED PORTION ONLY *(Example: $500 monthly for life; guaranteed 240 months.)*	STARTING DATE FOR PAYMENT
$ [redacted],000 4/5	3/31/96
$ [redacted],000 4/5	3/31/98
$ 10,000 4/5	3/31/2000
$ 10,000 4/5	3/31/2002
$350 per month for 60 mos. Certain	3/31/1998
$ 13,000 4/5	3/31/2004
$ 15,000 4/5	3/31/2006
$ 18,000 4/5	3/31/2008
$ 20,000 4/5	3/31/2010
$ 30,000 4/5	3/31/2015

STRUCTURED ATTORNEY'S FEES

ATTORNEY'S COMPLETE NAME:

ATTORNEY'S DATE OF BIRTH:

ATTORNEY'S MAILING ADDRESS *(Include zip code)*:

DESCRIPTION OF SETTLEMENT *(Example: $10,000 per year for 7 years...)*	STARTING DATE FOR PAYMENT

Exhibit 1

ADDENDUM

(Teddie Jean Gryczkowski)

Plan Applied For:

$1,000.00 Per month guaranteed for 480 months and life thereafter beginning 6-1-84.

$22,000 Lump sum guaranteed to be paid on 6-1-89.

$40,000 Lump sum guaranteed to be paid on 6-1-94.

$74,000 Lump sum guaranteed to be paid on 6-1-99.

$119,000 Lump sum guaranteed to be paid on 6-1-2004.

$185,000 Lump sum guaranteed to be paid on 6-1-2009.

$255,000 Lump sum guaranteed to be paid on 6-1-2014.

$360,000 Lump sum guaranteed to be paid on 6-1-2019.

Signature of Applicant
Director-Claim Department

Exhibit 1

Aetna LIFE & CASUALTY

STRUCTURED SETTLEMENT PAYMENT TRANSMITTAL

(PLEASE PRINT OR TYPE)

Pr SBI Safeco

To: Benefits Planning/Structured Settlements - Home Office, D309

Date 4/6/84

R. FOGLIL, No. JERSEY (WEILL)

☐ CID Claim ☑ PFSD Claim

Telephone No. (201) 285-5870

CLAIMANT	DATE OF ACCIDENT
TEDDIE JEAN GRYCZKOWSKI	12/22/80

(If multiple files - list each file number and amount to be charged to each claim)

CLAIM FILE NUMBER UNIT/OFF. CODE-CCL-SERIAL NO.-SUFX.	INSURED	POLICY NUMBER OFF. CODE-SYMB.-SERIAL NO.-SUFX.	POLICY EFFECTIVE DATE MM DD YY	ANNUITY PREMIUM (Exclude prior paid advances, liens, front money, and lump sum Attorney Fees)
R38AA 7251229R6	JOHN HENDERSON	38SR 6369555PCA	8/20/80	$ 232,819
				$
				$ 4/6/84

CLAIMANT'S SETTLEMENT

(Attach Birth Certificate for each payee receiving a life income or deferred payments based on age. Use additional forms for multiple payees.)

PAYEE'S COMPLETE NAME: TEDDIE JEAN GRYCZKOWSKI

PAYEE'S DATE OF BIRTH: 1/29/61

PAYEE'S MAILING ADDRESS (Include zip code):
4 CHERYL COURT
PISCATAWAY, N.J. 08854
ZIP CODE

ACCOUNT NUMBER (If sending payment to a bank, payee's account number is required)

DESCRIPTION OF SETTLEMENT-STRUCTURED PORTION ONLY (Example: $300 monthly for life; guaranteed 240 months.):

DESCRIPTION OF SETTLEMENT-STRUCTURED PORTION ONLY			STARTING DATE FOR PAYMENT
$1000.00	40CC w pw	(107,671)	6/1/84
$22,000	ok	(560)	6/1/89
$40,000	ok	(304)	6/1/94
$74,000	ok	(166)	6/1/99
$119,000	ok LS	(104)	6/1/2004
$185,000	ok	(65)	6/1/2009
$255,000	ok	(47)	6/1/2014
$360,000	ok	(34)	6/1/2019

STRUCTURED ATTORNEY'S FEES

ATTORNEY'S COMPLETE NAME: RICHARD C. SWARBRICK

ATTORNEY'S DATE OF BIRTH: 5/24/27

ATTORNEY'S MAILING ADDRESS (Include zip code):
344 ~~HOSE~~ LANE
PISCATAWAY, NJ 08854

DESCRIPTION OF SETTLEMENT (Example: $10,000 per year for 7 years.):

DESCRIPTION OF SETTLEMENT			STARTING DATE OF PAYMENT
$845.60	60C ok	(47,017)	6/1/84
	ok CC 4-9-84		

Exhibit 1

(C-4113-B) 10-83

CONTRACT DATA

PAYMENT SCHEDULE	ANNUITY AMOUNT
May 1, 1992	$15,000.00
May 1, 1995	$20,000.00
May 1, 2000	$30,000.00
May 1, 2005	$50,000.00
May 1, 2010	$263,000.00

DEATH BENEFIT AT DEATH OF OWNER

The greater of: (a) the Single Premium; or (b) 93% of the Single Premium increased with interest at the rate of 10% per year, compounded each year, from the Contract Date to the Date of Death.

CONTRACT NUMBER K0286301	10/13/1988	CONTRACT DATE
ANNUITANT Michael Grossman	Male	SEX
COMMENCEMENT DATE 5/1/1992	18	ISSUE AGE
PERIOD CERTAIN 19 Years	Valuable Consideration	SINGLE PREMIUM
OWNER, OWNER'S DESIGNEE, PAYEE & CONTINGENT PAYEE	As provided in the application unless otherwise designated by Endorsement or Rider.	

Aetna LIFE & CASUALTY

STRUCTURED SETTLEMENT PAYMENT TRANSMITTAL

UPL
AETCHI

(PLEASE PRINT OR TYPE)

DEP 10/14/88

To: Benefits Planning/Structured Settlements - Home Office, D309

Date 10/11/88

LEIGH PRESUTTI
DETROIT

☐ CID Claim
☑ PFSD Claim

Telephone No. (313) 637-6098

CLAIMANT	DATE OF ACCIDENT
MICHAEL GROSSMAN	11/29/84

(If multiple files - list each file number and amount to be charged to each claim)

CLAIM FILE NUMBER (UNIT/OFF. CODE-CCL-SERIAL NO.-SUFX.)	INSURED	POLICY NUMBER (OFF. CODE-SYMB.-SERIAL NO.-SUFX.)	POLICY EFFECTIVE DATE (MM DD YY)	ANNUITY PREMIUM (Exclude prior paid advances, liens, front money, and lump sum Attorney Fees)
H205HCB538 0919RG	GORDON SCOVEL	205SH122153 32PCA	7/27/84	$ 79,927.22
				$
				$

CLAIMANT'S SETTLEMENT *(Attach Birth Certificate for each payee receiving a life income or deferred payments based on age. Use additional forms for multiple payees.)*

PAYEE'S COMPLETE NAME	PAYEE'S DATE OF BIRTH
MICHAEL GROSSMAN	5/1/70
PAYEE'S MAILING ADDRESS *(Include zip code)*	**ACCOUNT NUMBER** *(If sending payment to a bank, payee's account number is required)*
ZIP CODE	

DESCRIPTION OF SETTLEMENT-STRUCTURED PORTION ONLY *(Example: $500 monthly for life; guaranteed 240 months.)*:		STARTING DATE FOR PAYMENT
15000	LS	5/1/92
20000	LS	5/1/95
30000	LS	5/1/00
50000	LS	5/1/05
263,000	LS	5/1/10

STRUCTURED ATTORNEY'S FEES

ATTORNEY'S COMPLETE NAME	ATTORNEY'S DATE OF BIRTH
ATTORNEY'S MAILING ADDRESS *(Include zip code)*	

DESCRIPTION OF SETTLEMENT *(Example: $10,000 per year for 7 years.)*:	STARTING DATE FOR PAYMENT

Exhibit 1

SPECIFICATIONS

Annuitant: **Bruce Grosvenor** Contract No. **WS 12774 - 2**
(Measured Life)

Date of Issue: **June 1, 1982** First Payment Date: **June 1, 2002**

Owner: **The Ætna Casualty And Surety Co.**

Stated Annuity Payment Option: **Pay in one lump sum the amount of $75,236.00 on June 1, 2002**

Amount of Annuity Payment: $75,236.00 This Amount of Annuity Payment is the paid-up annuity due on the above First Payment Date.

THERE ARE NO CASH SURRENDER BENEFITS.

THERE ARE NO DEATH BENEFITS PRIOR TO THE FIRST PAYMENT DATE.

Guaranteed Number of Payments (if any): 1

Guaranteed Interest Rate (Prior to First Payment Date): 10.61%

Frequency of Payment (if other than monthly): One lump sum payment

Amount of Single Premium: $9,999.92

8-11-82

Deduction From Premium — The amount of the Premium applied will be the Premium received minus a deduction for premium taxes, if any.

This Contract is a legal contract between the Owner and Ætna.

READ THIS CONTRACT CAREFULLY. This Contract sets forth, in detail, all of the rights and obligations of both you and Ætna. IT IS THEREFORE IMPORTANT THAT YOU READ THIS CONTRACT CAREFULLY.

SPECIFICATIONS

Annuitant: Michael Phillip Grey (Measured Life) Contract No. WS 11018

Date of Issue: June 17, 1981 First Payment Date: June 17, 1996

Owner: The Ætna Casualty and Surety Co.

Stated Annuity Payment Option: Pay in one lump sum the amount of $25,000.00 on June 17, 1996.

Amount of Annuity Payment: $25,000.00 This Amount of Annuity

Payment is the paid-up annuity due on the above First Payment Date.

THERE ARE NO CASH SURRENDER BENEFITS.

THERE ARE NO DEATH BENEFITS PRIOR TO THE FIRST PAYMENT DATE.

Guaranteed Number of Payments (if any): 1

Guaranteed Interest Rate (Prior to First Payment Date): 11.03%

Frequency of Payment (if other than monthly): one lump sum payment

Amount of Single Premium: $5,200.63

Deduction From Premium — The amount of the Premium applied will be the Premium received minus a deduction for premium taxes, if any.

This Contract is a legal contract between the Owner and Ætna.

READ THIS CONTRACT CAREFULLY. This Contract sets forth, in detail, all of the rights and obligations of both you and Ætna. IT IS THEREFORE IMPORTANT THAT YOU READ THIS CONTRACT CAREFULLY.

SPECIFICATIONS

Annuitant: Michael Phillip Grey (Measured Life) Contract No. WS 11018

Date of Issue: June 17, 1981 First Payment Date: June 17, 1991

Owner: The Ætna Casualty and Surety Co.

Stated Annuity Payment Option: Pay in one lump sum the amount of $15,000.00 on June 17, 1991.

Amount of Annuity Payment: $15,000.00 This Amount of Annuity Payment is the paid-up annuity due on the above First Payment Date.

THERE ARE NO CASH SURRENDER BENEFITS.

THERE ARE NO DEATH BENEFITS PRIOR TO THE FIRST PAYMENT DATE.

Guaranteed Number of Payments (if any): 1

Guaranteed Interest Rate (Prior to First Payment Date): 12.10%

Frequency of Payment (if other than monthly): one lump sum payment

Amount of Single Premium: $4,785.47

Deduction From Premium — The amount of the Premium applied will be the Premium received minus a deduction for premium taxes, if any.

This Contract is a legal contract between the Owner and Ætna.

READ THIS CONTRACT CAREFULLY. This Contract sets forth, in detail, all of the rights and obligations of both you and Ætna. IT IS THEREFORE IMPORTANT THAT YOU READ THIS CONTRACT CAREFULLY.

RE: Accident of: 4-11-92

DISTRIBUTION STATEMENT

Amount of Settlement: Cash received		$200,000.00
Present value of Structured Settlement at $550.00 per month for 15 years		115,000.00
		$315,000.00
Less Attorney's fees:		126,000.00 ✓✓
		$189,000.00
Less Structured settlement to be paid to client in future		115,000.00
CASH AVAILABLE		$ 74,000.00

LESS COSTS ADVANCED:

Photos & Film	$ 9.88
InfoCopy	45.10
Sparrow Investigations	798.55
Sparrow Investigations	200.00
Clerk of the Circuit Court	200.00
Broward Sheriff's Office	13.00
Sheriff of Dade County	26.00
InfoCopy	14.52
Dr. Marc Hammerman (conference)	100.00
Clerk of the Circuit Court	2.00
Broward Process Servers	25.00
Broward Medical Examiner	8.00
John Camino	8.00
Internal Revenue Service	12.75
Verbatim Reporting Service	135.00
Clerk of the Circuit Court	1.00
Broward Process Servers	20.00
Hill & Neale	44.00
Lauderdale Reporting Service	175.50
Dr. Marc Hammerman (conference)	200.00
Dr. Marc Hammerman (records)	107.00
Dr. Michael Margaretten	65.00
Davie Police Dept. Records	28.50
Guy E. Von Wiegand	50.00
Cash (Conf. with Ofc. Kiso)	50.00
Broward Process Servers	40.00
Clerk of the Circuit Court	4.00
MRC-Humana Hospital Bennett	6.00
MRC-Humana Hospital Bennett	6.00
Rush Messenger Service	19.75
Affordable Copy Service	129.21
Dr. Michael Margaretten	300.00
Clerk of the Circuit Court	1.00
Broward Process Servers	20.00
Dr. William Fogarty	8.00
Southeastern University	200.00
Dr. Marc Hammerman	$100.00
Broward Process Servers	25.00
Clerk of the Circuit Court	1.00
Officer Holden - Davie Police Dept.	10.00
Guy E. Von Wiegand	60.00
Lauderdale Reporting Service	150.75** ✓
Memorial Hospital	67.00** ✓
Barnett, Hill, Barnard & Neale	41.75** ✓
Mechanical Consulting & Services	372.50** ✓
Mediation, Inc.	299.50** ✓
Lauderdale Reporting Service	90.00** ✓
Miscellaneous Costs: including long distance telephone, postage, photo-copying, etc., to 1-22-93	362.80
	3631.56 ✓
	$ 4,653.06

Exhibit 2

Settlement Proposal for CHRISTY
DATE OF BIRTH: 01-13-1976
Funding Date: 10-14-1994

Item	Guaranteed	Expected
$500.00 monthly beginning 11-14-1994 through 10-14-1999. 60 Payments guaranteed.	$ 30,000.00	$ 30,000.00
Lump sum: $5,000.00 on 01-13-00	$ 5,000.00	$ 5,000.00
Lump sum: $10,000.00 on 01-13-02	$ 10,000.00	$ 10,000.00
Lump sum: $10,000.00 on 01-13-07	$ 10,000.00	$ 10,000.00
Lump sum: $15,000.00 on 09-11-09	$ 15,000.00	$ 15,000.00
$8000.00 annually beginning 09-11-2011 through 09-11-2014 4 payments guaranteed.	$ 32,000.00	$ 32,000.00
Lump sum: $25,000.00 on 01-13-17	$ 25,000.00	$ 25,000.00
Up Front Cash:	$ 95,000.00	$ 95,000.00
Totals:	$222,000.00	$222,000.00

Prepared 10-06-1994, 12:19 p.m.

Exhibit 3

Present Value Calculation for: Christy

Compound Period ..... : Monthly

Nominal Annual Rate ....: 9.569 %
Effective Annual Rate ... : 10.000 %
Periodic Rate .....: 0.7974 %
Daily Rate ..... : 0.02622 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	10/14/1994	140,308.23	1		
2	Payment	11/14/1994	95,000.00	1		
3	Payment	11/14/1994	500.00	60	Monthly	10/14/1999
4	Payment	01/13/2000	5,000.00	1		
5	Payment	01/13/2002	10,000.00	1		
6	Payment	01/13/2007	10,000.00	1		
7	Payment	01/13/2009	10,000.00	1		
8	Payment	09/11/2011	8,000.00	4	Annual	09/11/2014
9	Payment	01/13/2017	25,000.00	1		

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
1994 Totals	96,000.00	1,485.07	94,514.93	45,793.30
1995 Totals	6,000.00	4,309.06	1,690.94	44,102.36
1996 Totals	6,000.00	4,139.98	1,860.02	42,242.34
1997 Totals	6,000.00	3,953.97	2,046.03	40,196.31
1998 Totals	6,000.00	3,749.37	2,250.63	37,945.68
1999 Totals	5,000.00	2,953.47	2,046.53	35,899.15
2000 Totals	5,000.00	861.68	4,138.32	31,760.83
2002 Totals	10,000.00	6,669.78	3,330.22	28,430.61
2007 Totals	10,000.00	17,357.18	7,357.18-	35,787.79
2009 Totals	10,000.00	7,515.44	2,484.56	33,303.23
2011 Totals	8,000.00	9,621.43	1,621.43-	34,924.66
2012 Totals	8,000.00	3,492.47	4,507.53	30,417.13
2013 Totals	8,000.00	3,041.71	4,958.29	25,458.84

ared for: ROSE
im number: 20-2333-823
osal number: 01

Requested by: BRUCE
Office name:
Location code: 117
Date prepared: 03-21-9

PROPOSAL NOT VALID AFTER 04-30-95

Schedule of Annuity Payments

	Total Payments
Segment 1	
240 PAYMENTS OF $630.89 PAYABLE MONTHLY WITH THE FIRST PAYMENT ON JANUARY 1, 1996, AND THE FINAL PAYMENT ON DECEMBER 1, 2015.	$151,413.60
Annuity Total	$151,413.60
Previous Amount Paid	$110,000.00
Grand Total	$261,413.60

Present Value Calculation for: Rose

[redacted]mpound Period ..... : Monthly

Nominal Annual Rate ....: 9.569 %
Effective Annual Rate ... : 10.000 %
Periodic Rate .....: 0.7974 %
Daily Rate ..... : 0.02622 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	03/21/1995	63,028.27	1		
2	Payment	01/01/1996	630.89	240	Monthly	12/01/2015

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
1995 Totals	0.00	0.00	0.00	63,028.27
1996 Totals	7,570.68	10,723.13	3,152.45-	66,180.72
1997 Totals	7,570.68	6,277.06	1,293.62	64,887.10
[redacted]98 Totals	7,570.68	6,147.68	1,423.00	63,464.10
1999 Totals	7,570.68	6,005.39	1,565.29	61,898.81
2000 Totals	7,570.68	5,848.87	1,721.81	60,177.00
2001 Totals	7,570.68	5,676.69	1,893.99	58,283.01
2002 Totals	7,570.68	5,487.29	2,083.39	56,199.62
2003 Totals	7,570.68	5,278.95	2,291.73	53,907.89
2004 Totals	7,570.68	5,049.78	2,520.90	51,386.99
2005 Totals	7,570.68	4,797.69	2,772.99	48,614.00
2006 Totals	7,570.68	4,520.38	3,050.30	45,563.70
2007 Totals	7,570.68	4,215.34	3,355.34	42,208.36
2008 Totals	7,570.68	3,879.83	3,690.85	38,517.51
[redacted]09 Totals	7,570.68	3,510.72	4,059.96	34,457.55
2010 Totals	7,570.68	3,104.74	4,465.94	29,991.61

SETTLEMENT ANNUITY
PACKAGE ILLUSTRATIONS
FOR MR. & MRS. GIBBONS

May 4, 1993

DESCRIPTION OF BENEFITS	YIELD*	GUARANTEE**
ILLUSTRATION NO. 3		
Up Front Monies	$152,000	$152,000
Joint Life Annuity with 20 years payments guaranteed in the event of the premature death of both annuitants, providing $2,200 per month level income, first payment commencing on 08/25/93, with 100% of the income continuing to the survivor	$976,800	$528,000
Lump Sum Payments for MR. & MRS. GIBBONS:		
$ 10,000 on 07/25/98	$10,000	$10,000
$ 20,000 on 07/25/03	$20,000	$20,000
$ 40,000 on 07/25/08	$40,000	$40,000
$ 80,000 on 08/25/13	$80,000	$80,000
	$150,000	$150,000
TOTAL SETTLEMENT PACKAGE	$1,278,800	$830,000

* Yield figures are based on life expectancy to 80 years.

** Portion of the annuity guaranteed in the event of premature death.

THE

COMPANY

Present Value Calculation for: Gibbons

[redacted]mpound Period ..... : Monthly

Nominal Annual Rate .... : 9.569 %
Effective Annual Rate ... : 10.000 %
Periodic Rate ..... : 0.7974 %
Daily Rate ..... : 0.02622 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	05/04/1993	416,553.66	1		
2	Payment	05/04/1993	152,000.00	1		
3	Payment	08/25/1993	2,200.00	60	Monthly	07/25/1998
4	Payment	07/25/1998	10,000.00	1		
5	Payment	08/25/1998	2,200.00	60	Monthly	07/25/2003
6	Payment	07/25/2003	20,000.00	1		
7	Payment	08/25/2003	2,200.00	60	Monthly	07/25/2008
8	Payment	07/25/2008	40,000.00	1		
9	Payment	08/25/2008	2,200.00	60	Monthly	07/25/2013
10	Payment	07/25/2013	80,000.00	1		

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
1993	Totals	163,000.00	16,488.04	146,511.96	270,041.70
1994	Totals	26,400.00	25,814.97	585.03	269,456.67
1995	Totals	26,400.00	25,756.49	643.51	268,813.16
1996	Totals	26,400.00	25,692.13	707.87	268,105.29
1997	Totals	26,400.00	25,621.36	778.64	267,326.65
1998	Totals	36,400.00	25,138.37	11,261.63	256,065.02
1999	Totals	26,400.00	24,417.33	1,982.67	254,082.35
2000	Totals	26,400.00	24,219.04	2,180.96	251,901.39
2001	Totals	26,400.00	24,000.95	2,399.05	249,502.34
2002	Totals	26,400.00	23,761.05	2,638.95	246,863.39
[redacted]03	Totals	46,400.00	22,686.93	23,713.07	223,150.32
2004	Totals	26,400.00	21,125.86	5,274.14	217,876.18

Exhibit 5

d) Payment of unpaid medical bill $ 1,760.00

e) Net to plaintiff in the sum of $ 13,400.00 shall be deposit with Bayview Federal Savings & Loan Association, 3560 Homestead Road, Santa Clara, California, in the highest interest-bearing. insured savings instrument. No withdrawals without Order of Court. Rollovers and reinvestments may be made without Order of Court provided no withdrawals are made. More than one instrument may be opened. Upon reaching majority on November 28, 1990, the minor plaintiff may withdraw all funds on deposit without further Order of Court.

TOTAL CASH SETTLEMENT $ 37,893.00

2) In addition to the immediate payment of $37,893.00, the defendants will make the following payments to plaintiff:

a) Beginning at age 18, payment of $8,400/year at $700/month for 5 years; $ 42,000.00

b) Beginning at age 23, payment of $16,800/year at $1,400/month for 5 years; $ 84,000.00

c) Beginning at age 28, payment of $30,000/year at $2,500/month for 5 years; $150,000.00

d) At age 35 a lump sum payment of $100,000.00

TOTAL CASH AND EXTENDED BENEFITS $413,893.00

e) The above amounts are guaranteed and should the minor plaintiff die the proceeds would go to her estate.

Present Value Calculation for: Unnamed

Compound Period ..... : Monthly

Nominal Annual Rate ....: 9.569 %
Effective Annual Rate ... : 10.000 %
Periodic Rate .....: 0.7974 %
Daily Rate ..... : 0.02622 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	05/01/1986	129,178.56	1		
2	Payment	05/01/1986	37,893.00	1		
3	Payment	11/28/1990	700.00	60	Monthly	10/28/1995
4	Payment	11/28/1995	1,400.00	60	Monthly	10/28/2000
5	Payment	11/28/2000	2,500.00	60	Monthly	10/28/2005
6	Payment	11/28/2007	100,000.00	1		

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
1986 Totals	37,893.00	0.00	37,893.00	91,285.56
1990 Totals	1,400.00	51,001.31	49,601.31-	140,886.87
1991 Totals	8,400.00	13,710.31	5,310.31-	146,197.18
1992 Totals	8,400.00	14,241.34	5,841.34-	152,038.52
1993 Totals	8,400.00	14,825.48	6,425.48-	158,464.00
1994 Totals	8,400.00	15,468.04	7,068.04-	165,532.04
1995 Totals	9,800.00	16,169.27	6,369.27-	171,901.31
1996 Totals	16,800.00	16,433.39	366.61	171,534.70
1997 Totals	16,800.00	16,396.72	403.28	171,131.42
1998 Totals	16,800.00	16,356.38	443.62	170,687.80
1999 Totals	16,800.00	16,312.04	487.96	170,199.84
2000 Totals	19,000.00	16,254.48	2,745.52	167,454.32
2001 Totals	30,000.00	15,394.11	14,605.89	152,848.43
2002 Totals	30,000.00	13,933.51	16,066.49	136,781.94

HUVER & ASSOCIATES, INC.
Proposed Structured Settlement
December 28, 1990

Claimant: Age: 19
Life Expectancy: 64
Proposed Purchase Date: 01/15/1991 Birth Date: 08/04/1971

	GUARANTEED TOTAL PAYMENTS
FRONT MONEY	$184,918.00
Payments of $500 monthly, for a period certain of 2 years, 6 months starting 02/15/1991 through 07/15/1993	$15,000.00
Payment on 08/01/1991	$10,000.00
Payment on 08/01/1992	$10,000.00
Payment on 08/01/1993	$25,000.00
Payment on 02/15/1997	$25,000.00
Payment on 02/15/1999	$25,000.00
Payment on 02/15/2002	$25,000.00
Payment on 02/15/2004	$25,000.00
Payment on 02/15/2007	$50,000.00
Payment on 02/15/2009	$50,000.00
Payment on 02/15/2012	$50,000.00
Payment on 02/15/2017	$100,000.00
Payment on 02/15/2022	$250,000.00
Payment on 02/15/2027	$250,000.00
Payment on 02/15/2032	$250,000.00
Payment on 02/15/2037	$250,000.00
	$1,594,918.00

NOTE: Rates shown are guaranteed for 10 days from the date of this proposal

Exhibit 7

Present Value Calculation for: Huver & Associates Proposal

Compound Period ..... : Monthly

Nominal Annual Rate ....: 9.569 %
Effective Annual Rate ... : 10.000 %
Periodic Rate .....: 0.7974 %
Daily Rate ..... : 0.02622 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	01/15/1991	341,166.56	1		
2	Payment	01/15/1991	184,918.00	1		
3	Payment	02/15/1991	500.00	6	Monthly	07/15/1991
4	Payment	08/01/1991	10,000.00	1		
5	Payment	08/15/1991	500.00	12	Monthly	07/15/1992
6	Payment	08/01/1992	10,000.00	1		
7	Payment	08/15/1992	500.00	12	Monthly	07/15/1993
8	Payment	08/01/1993	25,000.00	1		
9	Payment	02/15/1997	25,000.00	1		
10	Payment	02/15/1999	25,000.00	1		
11	Payment	02/15/2002	25,000.00	1		
12	Payment	02/15/2004	25,000.00	1		
13	Payment	02/15/2007	50,000.00	1		
14	Payment	02/15/2009	50,000.00	1		
15	Payment	02/15/2012	50,000.00	1		
16	Payment	02/15/2017	100,000.00	1		
17	Payment	02/15/2022	250,000.00	1		
18	Payment	02/15/2027	250,000.00	1		
19	Payment	02/15/2032	250,000.00	1		
20	Payment	02/15/2037	250,000.00	1		

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
1991 Totals	200,418.00	13,707.96	186,710.04	154,456.52
1992 Totals	16,000.00	14,842.60	1,157.40	153,299.12
1993 Totals	28,500.00	9,385.91	19,114.09	134,185.03
1997 Totals	25,000.00	53,820.04	28,820.04-	163,005.07
1999 Totals	25,000.00	34,231.07	9,231.07-	172,236.14
2002 Totals	25,000.00	57,010.17	32,010.17-	204,246.31
2004 Totals	25,000.00	42,891.73	17,891.73-	222,138.04

Program RMH - 303

03/17/1993

SETTLEMENT PROPOSAL
for
Kimberly
DOB: 04/13/1976
Claim No.

BENEFIT	COST	GUARANTEED PAYOUT	EXPECTED PAYOUT
PAYABLE TO KIMBERLY			
$50,000 paid at time of settlement	$ 50,000	$ 50,000	$ 50,000
$1,623 paid monthly, guaranteed for 25 years certain & LIFE, beginning 1 month from purchase of annuity	$ 327,733	$ 486,900	$1,304,892
$50,000 paid in 5 years	$ 40,600	$ 50,000	$ 50,000
ATTORNEY FEES			
$209,167 paid at time of settlement	$ 209,167	$ 209,167	$ 209,167
TOTALS	~~$ 627,500~~	~~$ 796,067~~	~~$1,614,059~~

Total settlement cost:	$627,500
Less 1/3 for attorney fees	-209,167
	$418,333
Less cash to Kimberly	50,000
Annuity cost	$368,333

Prepared by:

SETTLEMENT SERVICES INC.
800/397-5696
815/961-9099

Exhibit 8

Kimberly Monthly Annuity
The Real Value of the Guaranteed Payout of the Annuity

Compound Period .....: Monthly

Nominal Annual Rate ... : 3.399 %
Effective Annual Rate .. : 3.452 %
Periodic Rate ..... : 0.2832 %
Daily Rate .....: 0.00931 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	08/17/1993	327,733.00	1		
2	Payment	09/17/1993	1,623.00	300	Monthly	08/17/2018

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
1993 Totals	6,492.00	3,701.33	2,790.67	324,942.33
1994 Totals	19,476.00	10,912.01	8,563.99	316,378.34
1995 Totals	19,476.00	10,616.35	8,859.65	307,518.69
1996 Totals	19,476.00	10,310.47	9,165.53	298,353.16
1997 Totals	19,476.00	9,994.05	9,481.95	288,871.21
1998 Totals	19,476.00	9,666.69	9,809.31	279,061.90
1999 Totals	19,476.00	9,328.04	10,147.96	268,913.94
2000 Totals	19,476.00	8,977.70	10,498.30	258,415.64
2001 Totals	19,476.00	8,615.26	10,860.74	247,554.90
2002 Totals	19,476.00	8,240.29	11,235.71	236,319.19
2003 Totals	19,476.00	7,852.38	11,623.62	224,695.57
2004 Totals	19,476.00	7,451.08	12,024.92	212,670.65
2005 Totals	19,476.00	7,035.95	12,440.05	200,230.60
2006 Totals	19,476.00	6,606.46	12,869.54	187,361.06
2007 Totals	19,476.00	6,162.14	13,313.86	174,047.20
2008 Totals	19,476.00	5,702.51	13,773.49	160,273.71

Kimberly $50,000 Lump Sum Annuity Payment
The Real Value of the Guaranteed Payout of the Annuity

Compound Period .....: Monthly

Nominal Annual Rate ... : 4.172 %
Effective Annual Rate .. : 4.253 %
Periodic Rate ..... : 0.3477 %
Daily Rate .....: 0.01143 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	08/17/1993	40,600.00	1		
2	Payment	08/17/1998	50,000.00	1		

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
1993 Totals	0.00	0.00	0.00	40,600.00
1998 Totals	50,000.00	9,400.00	40,600.00	0.00
Grand Totals	50,000.00	9,400.00	40,600.00	0.00

SETTLEMENT STATEMENT

DEBRA . . v. . . CONCRETE

1.	TOTAL SETTLEMENT: (*110,000.00 cash; balance in payments as specified in settlement agreement and release)	$200,000.00*
2.	LESS ATTORNEY'S FEES (1/3)	66,666.66
	NET TO CLIENT BEFORE PAYMENTS (present cash; balance in deferred payments)	$43,333.34
3.	EXPENSES PAID BY CHENEY & CHENEY:	
	(a) Gottschalk Engineering	$10,379.34
	(b) J. Waters Investigations	275.00
	(c) Ann Rewis, Court Reporter	571.00
	(d) Legal Research Associates	147.55
	(e) Wendell Smith	308.00
	(f) Zorn Aerial Photo	150.00
	(g) Kent, Vadnais & Wood	168.00
	(h) Betty D. Smith, Court Reporter	1,413.10
	(i) Brown Reporting	309.40
	(j) Coastal Reporting	107.65
	(k) Massey Logging	200.00
	(l) Gillis & Phillips Investigations	1,220.20
	(m) Professional Reporters	252.00
	(n) The Tattnall Bank, car payments	400.00
	(o) out of pocket expenses (medical reports, filing fees, postage, copies, long distance, etc.)	2,545.23
	TOTAL	$18,446.47
4.	TOTAL PAYMENTS BY OR ON BEHALF OF CLIENT:	
	(a) Dr. Snowdy	605.00
	(b) Neurological Institute of Savannah	380.00
	(c) The Tattnall Bank (payoff)	18,457.02
	(d) Collins Mobile Homes (down payment)	5,000.00
	(e) Hugh S. Geiger, M.D.	1,675.00
	(f) . . & . . expenses (this represents $5,330.15 in expenses that are being written off by &)	13,116.32
	TOTAL PAYMENTS	$39,233.34
4.	NET TO CLIENT:	$ 4,100.00

Exhibit 9

ANNUITY vs. LUMP SUM INVESTMENT

Date: 7/30/93

Investment: $650,000

Taxable Rate: 5.78% for 10 years in a U.S. TREASURY BOND

Non-Taxable Rate: 5.05% for 10 years in a AAA MUNICIPAL BOND

Federal Tax Bracket: 28%

	U.S. TREASURY BOND	AAA MUNICIPAL BOND	SETTLEMENT ANNUITY
Annual Payment:	37,570	32,825	36,438
Investment Term:	x 10 yrs	x 10 yrs	x 10 yrs
Investment Yield:	375,700	328,250	364,380
Federal Tax Bracket:	x 28%	x 0%	x 0%
Federal Tax Due:	105,196	0	0
After Tax Proceeds:	270,504	328,250	364,380
Net Investment Yield:	270,504	328,850	364,380
Return of Principal:	650,000	650,000	650,000
Total Proceeds:	920,504	978,250	1,014,380
Return Comparison to Annuity:	-10.2%	-3.69%	

Please note that the U.S. Treasury Bond and AAA Municipal Bond proceeds do not take into account any Management Fees.

Annuitant	BOBBYJO LYNN PLANK
Contract Number	AA585799
Contract Date	JUNE 13, 1989
Premium	$1.00 and other valuable consideration
Date of Birth	OCTOBER 18, 1977
Sex	FEMALE

Schedule of Benefits

Amount	Due Dates
$2,250.00	On OCTOBER 18, 2032 and on the 18th day of each following month as long as the annuitant is alive. In no event shall there be fewer than 240 payments.
$2,500.00	OCTOBER 18, 1995
$5,000.00	OCTOBER 18, 1998
$10,000.00	OCTOBER 18, 2002
$25,000.00	OCTOBER 18, 2012
$35,000.00	OCTOBER 18, 2022

Bobbyjo Lynn Plank

Compound Period ..... : Monthly

Nominal Annual Rate ....: 5.000 %
Effective Annual Rate ... : 5.116 %
Periodic Rate .....: 0.4167 %
Daily Rate ..... : 0.01370 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	06/13/1989	63,892.64	1		
2	Payment	10/18/1995	2,500.00	1		
3	Payment	10/18/1998	5,000.00	1		
4	Payment	10/18/2002	10,000.00	1		
5	Payment	10/18/2012	25,000.00	1		
6	Payment	10/18/2022	35,000.00	1		
7	Payment	10/18/2032	2,250.00	240	Monthly	09/18/2052

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
1989 Totals	0.00	0.00	0.00	63,892.64
1995 Totals	2,500.00	23,805.23	21,305.23-	85,197.87
1998 Totals	5,000.00	13,757.09	8,757.09-	93,954.96
2002 Totals	10,000.00	20,754.21	10,754.21-	104,709.17
2012 Totals	25,000.00	67,747.83	42,747.83-	147,457.00
2022 Totals	35,000.00	95,406.08	60,406.08-	207,863.08
2032 Totals	6,750.00	137,320.10	130,570.10-	338,433.18
2033 Totals	27,000.00	16,687.44	10,312.56	328,120.62
2034 Totals	27,000.00	16,159.86	10,840.14	317,280.48
2035 Totals	27,000.00	15,605.24	11,394.76	305,885.72
2036 Totals	27,000.00	15,022.26	11,977.74	293,907.98
2037 Totals	27,000.00	14,409.46	12,590.54	281,317.44
2038 Totals	27,000.00	13,765.32	13,234.68	268,082.76
2039 Totals	27,000.00	13,088.20	13,911.80	254,170.96

What are Structured Settlements Really About ???

On August 12, 1998, a hearing was held in the Circuit Court for Montgomery County, Maryland in the matter of Stone Street Capital v. Deborah L. Jackson, Civil No. 176131. In this hearing, Counsel for State Farm Insurance company discussed the reasons for pursuing structured settlements in personal injury case. Following is an excerpt from the transcript on this hearing:

THE COURT:	Why is it, by the way, that traditionally these [structured settlement annuity contracts] are non-assignable?
COUNSEL FOR STATE FARM:	There are a lot of reason. One is to protect the victim usually of personal injury. The whole reason for setting up these –
THE COURT:	Protect them from what?
COUNSEL FOR STATE FARM:	The whole reason for setting up these structured payments is so that they do not get a lump sum; they do not get $300,000 up front. These people–
THE COURT:	**No it is not. The reason for setting up these structured payments are so that the insurance companies can settle out cheaper.**
COUNSEL FOR STATE FARM:	**That is one reason.**
THE COURT:	All right, come on–
COUNSEL FOR STATE FARM:	I am not going to deny that.
THE COURT:	They are not looking out for a plaintiff in a personal injury case. Please.
COUNSEL FOR STATE FARM:	**That is one reason that Your Honor has said. It is more cost effective for the insurance company–**
THE COURT:	**That is the reason. That is the reason.**
COUNSEL FOR STATE FARM:	**Okay.**

Vote No on HR 4314

SUMMARY

Class action suit encaptioned:

Lisa M. McComber, on behalf of herself and all others similarly situated v. Travelers Property Casualty Corp., et al. Docket Number 398CV01060 (WWE)

The named plaintiff, a resident of Connecticut, entered into a structured settlement on March 20, 1998 with Travelers Property Casualty Corp providing for a 30 year annuity funded by Travelers Life Insurance Company. The plaintiff has made several allegations on behalf of herself and all persons who entered into structured settlements with Travelers Property Casualty Corp ("TPC") and its predecessors from 1982 to the present. This class action suit alleges that:

TPC engaged in (a) the illegal solicitation and sale of life insurance without a license and (b) an illegal rebating/kickback scheme between its wholly owned subsidiary Salomon Smith Barney Holdings, Inc. (and its subsidiary SBHU Life Agency of Ohio, Inc.) and the following insurance brokers: *Ringler Associates, Inc., Wells and Associates*, Travelers Life and Annuity Company and others not yet identified.

TPC provided its more than 5,000 claims adjusters with encouragement, training, key documentation, "specialized" software and other resources to help them facilitate the conversion of claims into annuitized structured settlements. The claims adjusters used the resources, expertise and guidance to sell life insurance without a license.

TPC directed its annuity business to designated brokers to which TPC enjoyed either an affiliation or a secret and illegal relationship, and these brokers rebated/kickbacked 50% of their commissions to TPC in exchange for (a) the business and (b) continued business from TPC and its affiliates.

The kickbacks resulted in TPC receiving millions in illegal commissions and the claimants receiving less than they should have.

TPC and its affiliates engaged in a systematic coverup of the wrongdoing both internally and in connection with various mergers and acquisitions involving TPC and its affiliates.

This suit was filed on June 5, 1998 in the United States District Court, District of Connecticut and is presently pending.

A second suit, alleging similar claims against the same and additional defendants, has been filed by a different plaintiff also in the United States District Court, District of Connecticut.

Additional information can be obtained by contacting Ralph M. Stone, Esq. at Shalov, Stone & Bonner at (212) 268-2727.

The Insurers' Professed Concern About "Adverse Tax Consequences" Is a Pretext.

In Reality, The Insurers Just Don't Want People to Know That SettlementPayments Over Time are Worth a Lot Less Than Advertised.

The insurers have suggested that the purchase of structured settlement payments might result in the loss of certain tax benefits under Internal Revenue Code section 130 to the party making payments to the claimant (the "structured settlement company"). In fact, there should be no adverse tax consequences to a structured settlement company. The "tax" issue is a pretext.

The real issue here is that the insurers just don't want people to know that the settlement payments they make over time are worth a lot less than they advertised them to be.
Section 130 of the Internal Revenue Code requires that structured settlement payments not be "accelerated, deferred, increased, or decreased" by the recipient, language commonly mirrored in the settlement agreements themselves. That language does not prohibit the recipient from selling structured settlement payments, nor does it prohibit using the right to receive such payments as collateral for a loan.

In the sixteen years that section 130 has been in existence, the Internal Revenue Service has never ruled that the purchase of structured settlement payments or the pledge of such payments for a loan would result in the loss of tax benefits to the structured settlement company making the payments. We are unaware of any tax audit in which the IRS has ever raised this tax issue. In the only reported court case on the issue, the U.S. Court of Appeals for the Third Circuit held specifically that there would not be a loss of tax benefits from the purchase of structured settlement payments. The court found no support for "this novel proposition." Western United Life Assurance Company v. Hayden, 64 F.3d 833 (3d Cir. 1995). Indeed, the IRS has recently ruled that a cash-out of structured settlement payments by a structured settlement company is permissible and would not trigger adverse tax consequences.

It would be unprecedented, to say the least, if a third party (in this case, the claimant) could undo the tax consequences for a company making the payments, many years after the settlement was finalized. We are unaware of any other provision in the Internal Revenue Code that gives an unrelated third party the ability, long after the fact, to increase the tax liability of another company.

Most tellingly, it is important to examine the behavior of the various structured settlement companies the companies now making the structured settlement payments to determine whether they really view third-party purchases of structured settlement payment streams as a significant tax risk for them. Public accounting rules require companies that consider themselves to have a material risk of a tax liability to either create a reserve against that liability or report it in their financial statements. Failure to do so is a clear violation of accounting standards. Therefore, if a company now making structured settlement payments considered claimants' sale of those payments as something that is likely to cause the companies to risk the loss of tax benefits under section 130, that conclusion must be reflected in their (the companies') financial statements. We are unaware of any instance in which they (the insurers or their structured settlement company affiliates) have done so. One can only conclude, therefore, that the insurance companies (and their structured settlement company affiliates) themselves have never really considered this so-called risk to be material.

How can the insurers ask this Legislature to severely restrict their claimants' property rights (the claimants' right to sell, pledge, or dispose of their property - in this case, their right to receive structured settlement payments—on the basis of a hypothetical risk that the insurers themselves do not consider material?

News You Can Use

Settling for less

Should accident victims sell their monthly payouts?

BY MARGARET MANNIX

Orion Olson has had his share of hard knocks. When he was 3 years old, a dog bite caused him vision and neurological problems, as well as injuries requiring plastic surgery. In his teens, he dropped out of high school and wound up homeless. But he had hope. On his 18th birthday, the Minneapolis man was to start receiving the first of five periodic payments totaling $75,000 from a lawsuit stemming from the dog attack. He received the first installment of $7,500, but the money didn't last long.

So when Olson saw a television ad for a finance company named J. G. Wentworth & Co. that provided cash to accident victims, he saw a way to get his life back on track. He agreed to sell his remaining future payments of $67,500 to Wentworth for a lump sum of $16,100. "I needed money," says Olson, now 20 years old. "If I could get the money out like they were saying on TV, I wouldn't have to worry about being on the street anymore." Within six months, however, Olson had spent all the money and was living in a car. He now wishes he had waited for his regular payments.

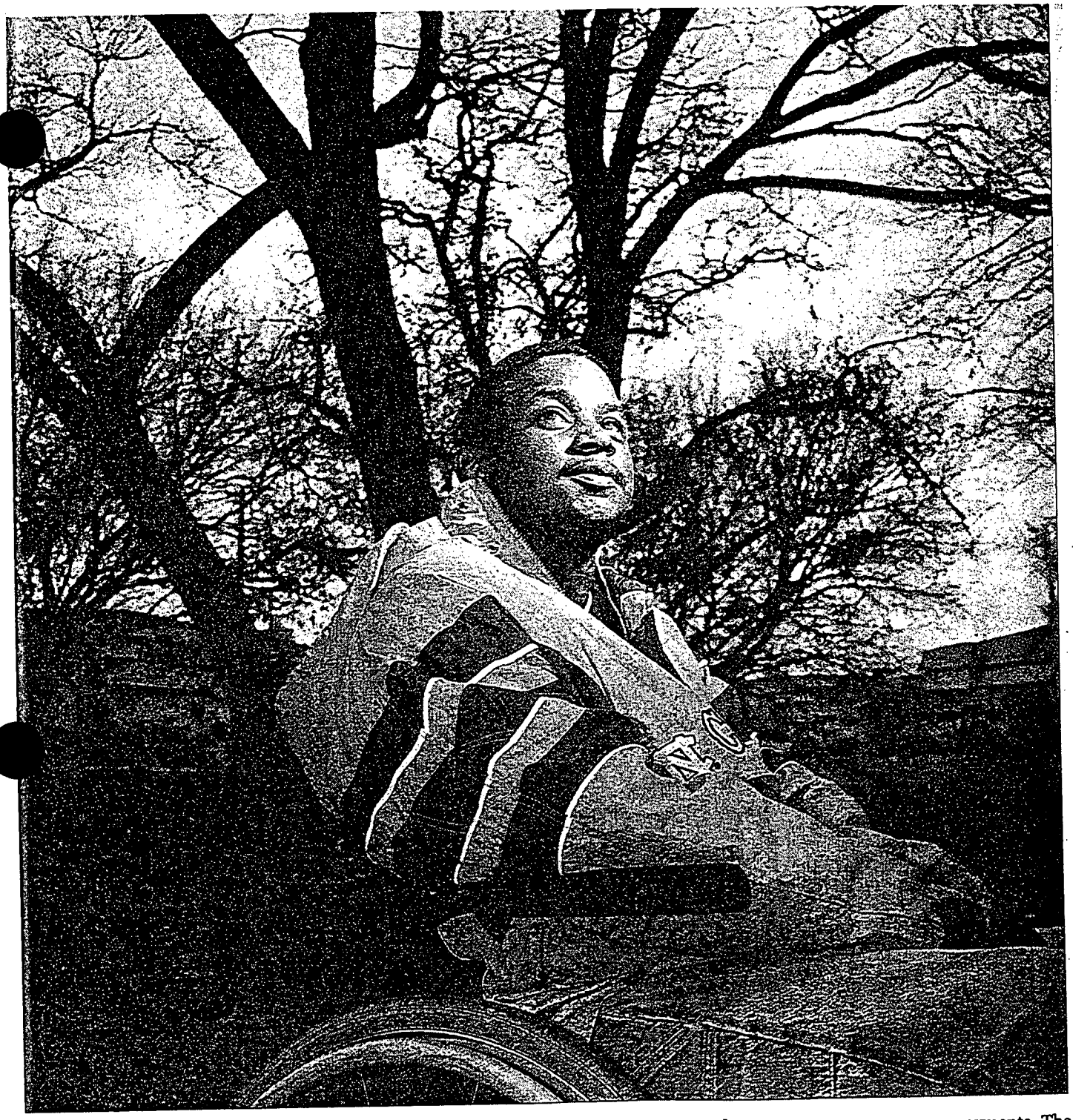
Olson may be financially unsophisticated, but he is also caught up in a burgeoning, and unregulated, new industry that specializes in converting periodic payments into fast cash. Also known as factoring companies, these firms can be a godsend to accident victims, lottery winners, and others who have guaranteed future incomes but need immediate funds. But like a modern-day Esau trading his inheritance for a bowl of soup, the unwary consumer may be selling future sustenance for cheap. A growing number of federal and state legislators, as well as several attorneys general, contend that factoring companies charge usurious interest rates, fail to properly disclose terms, and take advantage of desperate people. "It's unconscionable," says Minnesota Attorney General Mike Hatch. "They are really preying upon the vulnerable."

JERRY MAGEE Mississippi accident victim sold his payments for quick cash. Today he has only regrets.

PHOTOGRAPHY BY THOMAS W. BROENING FOR *USN&WR*

Frittering away. Critics further allege that factoring companies undermine the very law that Congress passed to help beneficiaries of large damage awards. In 1982, seeking to prevent accident victims from frittering away large sums intended to provide for them over their lifetimes, Congress instituted tax breaks for those who agreed to receive their money over a period of years. But now, contends Montana Sen. Max Baucus, a sponsor of that legislation, the careful planning that goes into the structuring of these payments "can be unraveled in an instant by a factoring company offering quick cash at a steep discount."

A number of advanced-funding companies compete for their share of future payments that include more than $5 billion in structured settlements awarded each year. The largest buyer is Wentworth, handling an estimated half of all such transactions. Based in Philadelphia, the firm began by financing nursing homes and long-term-care facilities. In 1992 it started buying



CHRISTOPHER HICKS Wentworth sued the Oklahoma man for the entire amount of his payments. "They make you think you are doing the right thing . . ., but you are really messing up your life."

settlements that auto-accident victims were owed by the state of New Jersey. Since then, Wentworth has completed more than 15,000 structured-settlement transactions with an approximate total value of $370 million.

The deals work like this: A structured-settlement recipient who wants to sell, say, $50,000 in future payments, will not get a lump sum of $50,000. That's because, as a result of inflation, money scheduled to be paid years from now is worth less today. Formulas based on such factors as inflation and the date that payments begin are used to determine the "present value" of the future payments. The seller is, in essence, borrowing a lump sum that is paid back with the insurance company payments. The interest on the borrowed sum is called the "discount rate."

Wentworth and other advanced-funding companies say they are providing a valuable service because structured settlements have a basic flaw: They are not flexible. Consumer needs change, they note, and a fixed monthly payment does not. Wentworth points to an Ohio woman who sold the company a $500 portion of her monthly payments for six years when her bills were piling up and her home mortgage was about to be foreclosed. She re-

d instant cash of $21,000, at a discount rate of 15.8 percent. The customer, who did not wish to be identified, says she is grateful to Wentworth for advancing her the money when her insurance company would not. "The insurance companies just don't understand," she says. "When I needed their help, they were not there." Likewise, a New York quadriplegic, who also did not want to be named, says he secured funds from Wentworth at a 12 percent discount rate to expand his own business and, as a result, is more successful than ever. "It was definitely worth it for me," he says.

But other customers are not as satisfied. New York City resident Raymond White lost part of one leg when he was struck by a subway train in 1990. A lawsuit led to a settlement that guaranteed White a monthly payment of $1,100, with annual cost-of-living increases of 3 percent. In 1996, White, who did not have a job, wanted cash to buy a car and pay medical bills. So he turned to Wentworth, selling portions of his monthly payments for the next 15 years in six different transactions.

RAYMOND WHITE After losing a leg in a subway accident, the New Yorker was guaranteed $1,100 very month. He gave up future payments totaling $198,000 in exchange for $54,000.

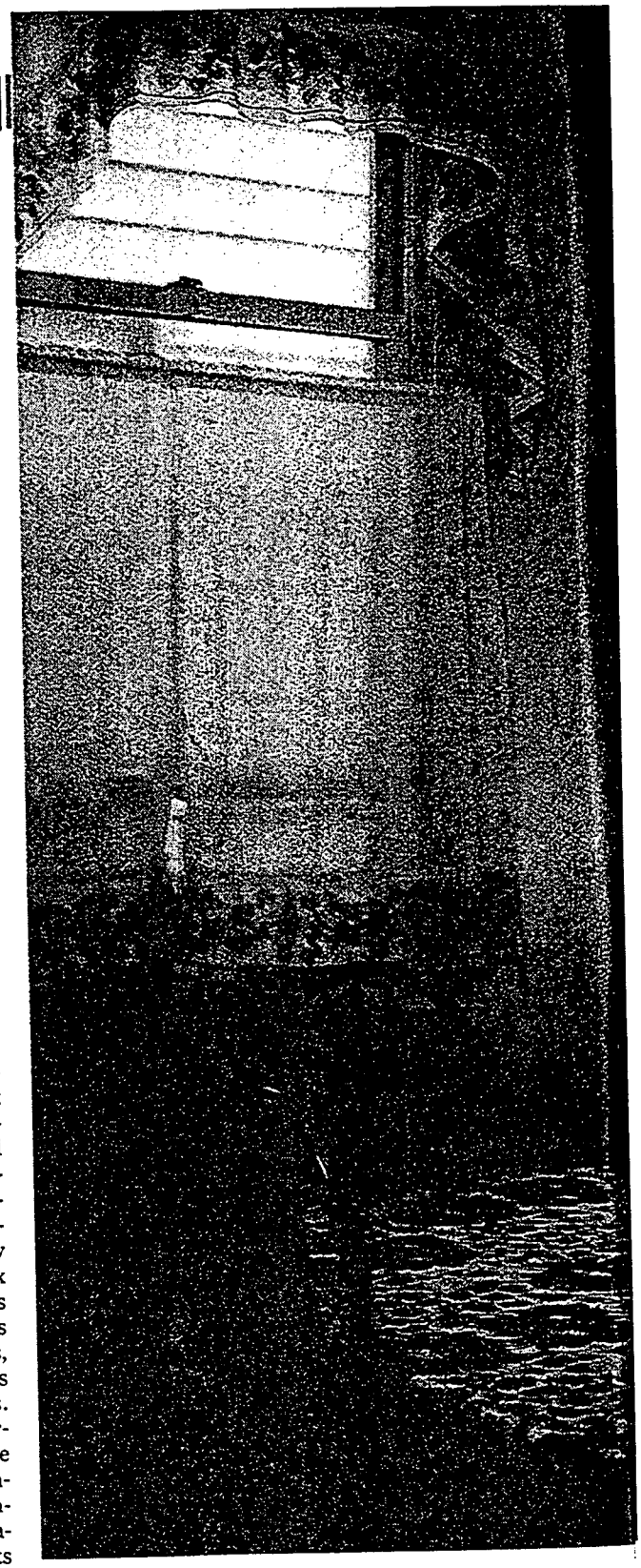
Altogether White gave up future payments totaling $198,000. He received a total of $54,000 in return, but the money, which he used for living expenses, is now gone. He bought a car, but it has been repossessed. He bought a plot of land in Florida, but lost it to foreclosure. With debts mounting, he now relies partially on public assistance to get by. "Unfortunately I was so overwhelmed with debt and striving for a better life that I went along with it," says White. "In reality, what I was doing was accumulating more debt for myself."

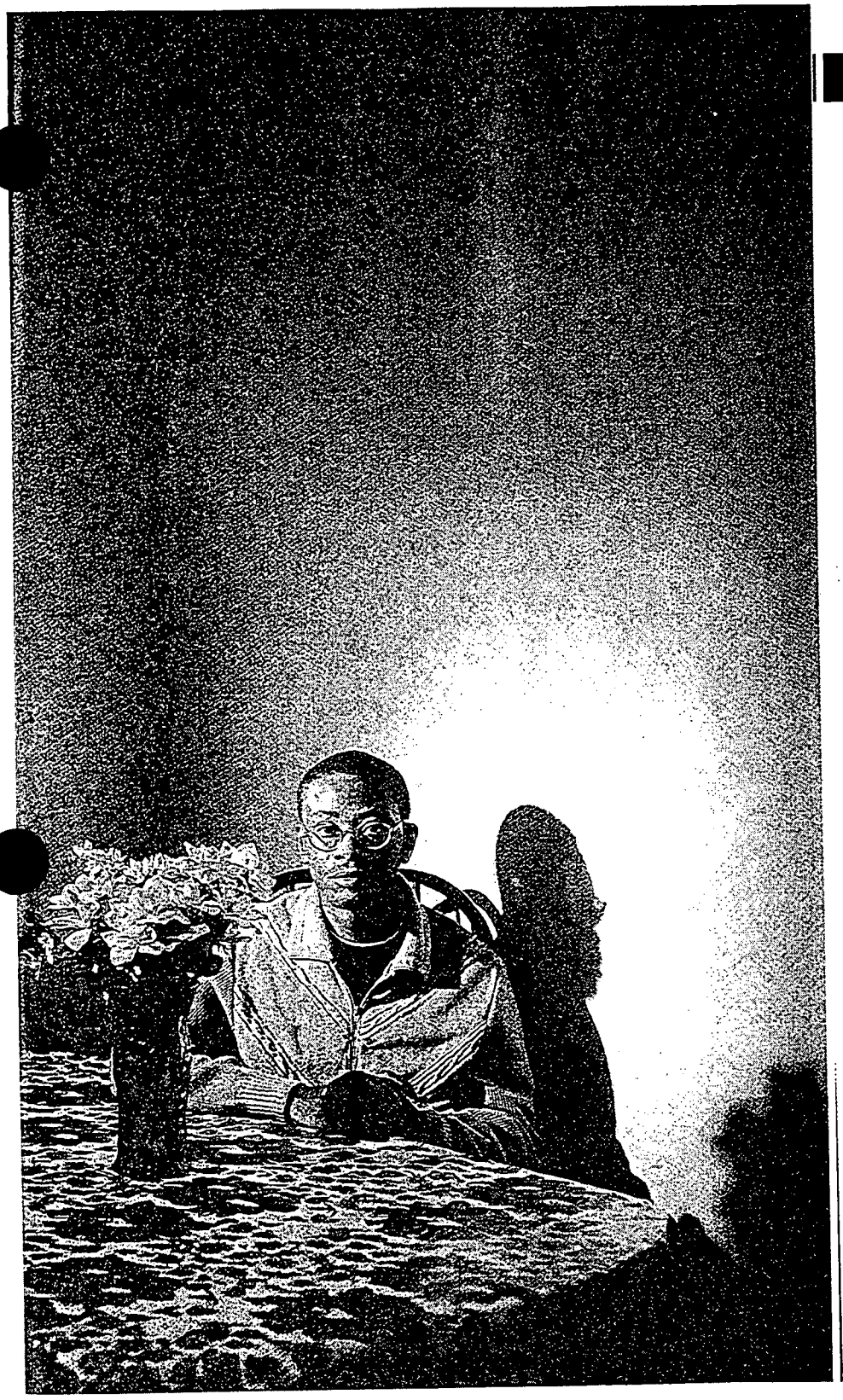
Some Wentworth customers say they might have realized the repercussions of their transactions had the contracts been clearer about the long-term costs. Jerry Magee of Magnolia, Miss., who has filed a class action suit against the company, is one of them. In a mortgage contract, for instance, lending laws require that consumers see their interest rate and the total amount of money they will be paying over the life of the loan. By contrast, Magee's lawyer says, neither the effective interest rate nor the total amount of the transaction was clearly spelled out in the 13-page contract or in the 25 other documents Wentworth required him to sign. Wentworth says it has been revising its documents to make them easier to understand.

Change of address. While the factoring transaction itself is complex, the transfer of payments is simple. The structured settlement recipient instructs the insurance company to change his or her address to that of the factoring company. The check remains in the recipient's name, and the factoring company uses a power of attorney, granted by the recipient, to cash it.

This roundabout method is used because insurance companies say structured payments should not be sold. Most settlement contracts specify that payments cannot be "assigned," and the Internal Revenue Service says that payments "cannot be "accelerated, deferred, increased or decreased." Selling payments, the insurance companies say, amounts to accelerating them. And that may threaten the claimant's tax break. Insurance companies say that if their annuitants start selling their payments, the social good that justifies the tax break disappears. Ironically, they make this argument even though some insurance companies themselves are now making counteroffers to factoring companies, accelerating payments to their own claimants. Berkshire Hathaway Life Insurance Co., for example, recently offered a claimant a lump sum of $59,000, beating Wentworth's offer of $45,000. The IRS has not formally addressed the tax issues, but the U.S. Department of the Treasury has recommended a tax on factoring transactions to discourage them.

Insurance companies also worry about having to pay twice. Last year, a judge ruled an insurance company was obligated to pay a workers' compensation recipient his monthly payments because the factoring transaction he entered into was invalid under Florida's workers' compensation statute. For their part, the factoring companies argue that even though the claimants do not own the annuities—





JONATHAN SAUNDERS FOR USN&WR

the insurance companies do—the factoring companies can buy the "right to receive" the payments.

Insurance companies are getting wise to these factoring deals—CNA, a Chicago-based insurer, noticed that annuitants from all over the country were changing their addresses to Wentworth's Philadelphia post office box—and some are trying to stop the transactions. Some insurance companies, for example, refuse to honor change-of-address requests or redirect the payments back to the annuitant after the deal is done. But redirecting a payment can cause serious consequences for the claimant. In Wentworth's case, the company has each customer sign a clause called a "confession of judgment," which allows the factoring company to sue customers quickly for default when their payments are not received; customers also waive the right to defend themselves.

Christopher Hicks, a 20-year-old accident victim from Oklahoma City, learned the effects of that clause the hard way. In 1997, Hicks signed over to Wentworth half of his $2,000 monthly payments for the next 32 months and $1,500 for the 26 months after that. In exchange, Hicks received $37,500, which he admits he quickly spent on furniture, clothes, and other items. When Wentworth failed to receive a check from the insurance company that pays Hicks the annuity, it secured a judgment against him for the *entire* amount of the deal—$71,000.

No clue. To collect, Wentworth garnisheed Metropolitan Life, meaning that Metropolitan Life was supposed to start sending Hicks's monthly checks to Wentworth. It did not—the company won't say why—and Hicks, who was supposed to be getting $1,000 back from Wentworth, was left with nothing. "When the money stopped, I had no clue what was going on," says Hicks, who had to rely on family and friends until the two companies settled their differences in court. Hicks now wishes he had never gotten involved with Wentworth. "They make you think you are doing the right thing in the long run," says Hicks, "but you are really messing up your life."

Wentworth makes liberal use of confession-of-judgment clauses even though they are illegal in consumer transactions in the company's home state of Pennsylvania. The Federal Trade Commission also bans the clauses as an unfair practice in consumer-credit transactions. The clauses *are* allowable in business transactions in Pennsylvania if they are accompanied by a statement of business purpose. So in each case Wentworth certifies that the agreements "were not entered into for family, personal, or household purposes."

Such language is used in affidavits despite cases like that of Davinia Willis, a 24-year-old resident of Richmond, Calif., who entered into a transaction with Wentworth in 1996 to stop her house from being foreclosed upon and to repair wheelchair ramps—clearly, she says, personal uses. In a class action lawsuit against the company, she cites the confession of judgment as one reason why the contract is "illegal, usurious, and unconscionable." Wentworth says the clauses are necessary to keep its customers from reneging on their agreements.

In the end, the controversy over factoring companies comes down to a funda-

al disagreement over the definition of their business. The factoring companies say they are not subject to usury or consumer-credit disclosure laws because they are not, in fact, lenders. "We don't make loans," declares Andrew Hillman, Wentworth's general counsel. "We buy assets." But some state attorneys general say these transactions differ very little, if at all, from loans and perhaps should be classified as such. That way, says Shirley Sarna, chief of the New York attorney general's consumer fraud and protection bureau, the law could prevent factoring companies from charging discount rates that she says in some cases have exceeded 75 percent. Wentworth says its average rate is 16 percent, and several factoring companies insist their rates would be much lower if insurance companies did not make it expensive for them to complete the deals. "By getting the insurance companies to process the address changes, it would overnight transform our discount rates from h teens to the single digits," s Jeffrey Grieco, managing director of Stone Street Capital, an advanced-funding firm in Bethesda, Md.

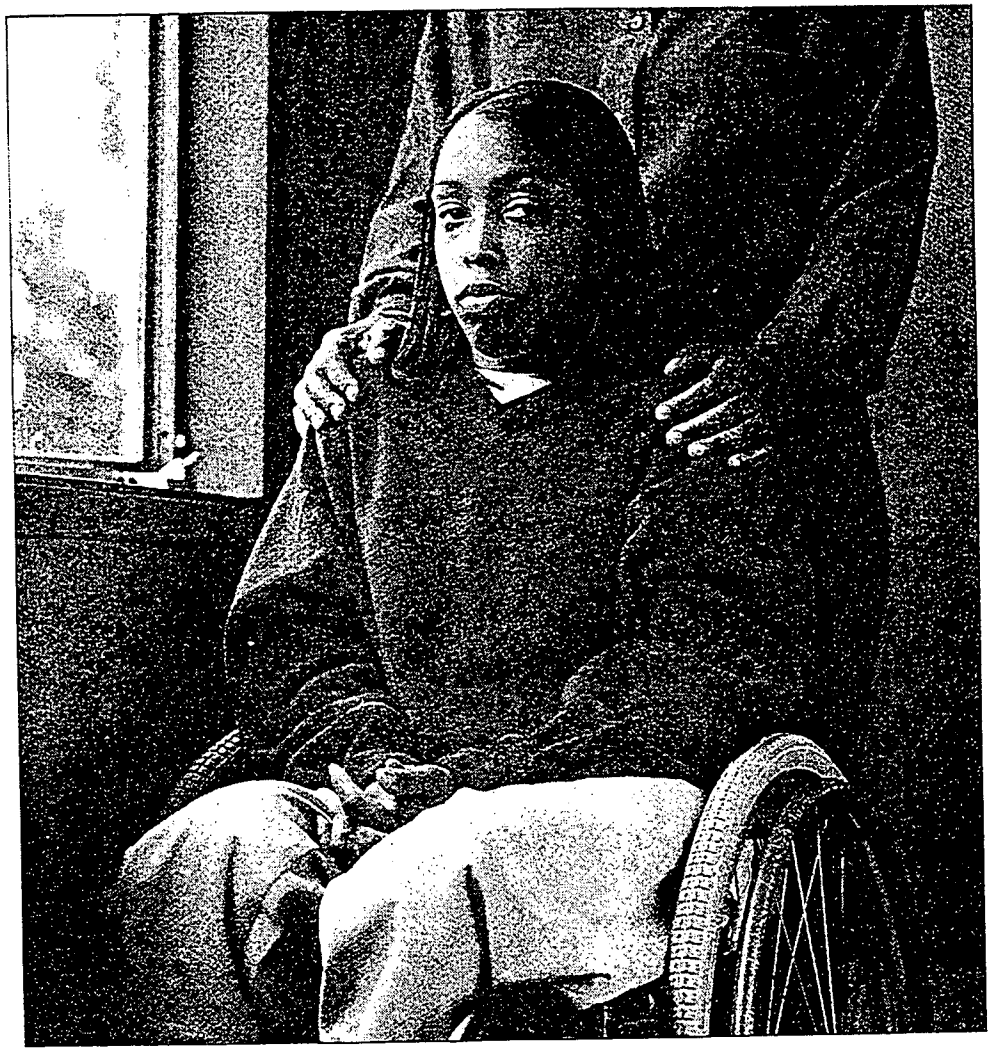
Who is right and who is wrong is being hammered out in courtrooms and statehouses across the country. The insurance companies were heartened last summer when a Kentucky judge denied four of Wentworth's garnishment actions, saying the purchase agreements the customers signed were neither valid nor legal. But other courts have ruled differently.

In Illinois, a new state law says that structured settlements can be sold as long as a judge approves the transaction. Wentworth notes that more than 100 such sales have been approved. At the same time, several state attorneys general are examining the factoring industry's practices. "You have got to worry about people who have a debilitating injury," says Joseph Goldberg, senior deputy attorney general for Pennsylvania. "The injury is never going away and they have no real means of income and probably no means of employment.... If they give that monthly payment up, it could have serious consequences." Voicing similar concerns, isability groups like the National Spinal ord Injury Association, which now refuses to accept factoring companies' advertisements in its magazine, are warning members about the hazards of cashing out. The association is "deeply concerned about the emergence of companies that purchase payments intended for disabled persons at a drastic discount," says its executive director, Thomas Countee.

While opinions are divided about the validity of factoring transactions, both sides agree that regulation of the secondary market is necessary. As in Illinois, Connecticut and Kentucky have passed laws requiring a judge's approval of advanced-funding deals, as well as fuller disclosure of costs. Faced with mounting criticism, Wentworth this week will announce its pledge to submit every request for purchase of a settlement to a court for approval. Other states are expected to address the issue this year, and in Congress, Rep. Clay Shaw, a Florida Republican, has reintroduced a measure that would tax factoring transactions.

The factoring companies respond to all these efforts by also calling for better disclosure from the primary market—the insurance companies, attorneys, and brokers that set up the structured settlements in the first place. Factoring companies argue that structured settlements are not always as generous as they are represented to be. "We challenge insurance companies and their brokers to take the same pledge," said Michael Goodman, Wentworth's executive vice president.

Whatever the outcome of the debate, consumers thinking about selling their future payments are well advised to take a hard look at what they are getting into. ■



DAVINIA WILLIS California woman sold her payments to prevent a home foreclosure. She is suing Wentworth claiming "illegal and usurious" terms.

DISCOUNTS CHARGED TO STRUCTURED SETTLEMENT RECIPIENTS IN FACTORING TRANSACTIONS

The accompanying table illustrates the discounts charged by factoring companies in a series of factoring transactions in which the settlement recipients have transferred or agreed to transfer future payments in exchange for immediate lump sums.

All of the transaction information in the table is taken from publicly available pleadings filed in federal and state courts in connection with confessions of judgment, garnishments, interpleader actions and other litigation arising from factoring transactions. Because factoring transactions are unregulated and are not publicly reported in any fashion, pleadings filed by factoring companies and other parties represent the best publicly available source of information about individual factoring transactions. The present values and the discount rate figures (i.e., the mortgage-equivalent rates and internal rates of return) have been computed by professional actuaries.

In most cases the factoring transactions listed in the table were completed. In a few cases the transactions have become the subject of litigation (e.g., declaratory judgment actions and proceedings for advance approval of factoring transactions under state statutes designed to protect structured settlements) prior to completion.

The material in the table can be illustrated by the following explanation of the factoring transaction entered into by payee Isaac Major, shown on p. 4: In early 1997, Major entered into a factoring agreement under which he agreed to sell 60 future structured settlement payments of $730 per month. Thus, Major sold the factoring company future payments in the aggregate amount of 60 times $730, or $43,800. In exchange for these future payments, the factoring company, J.G. Wentworth, agreed to make an immediate lump sum payment of $20,000. At the time of this transaction, the 60 future payments had a present value of $36,521.58. (This was the value of the future payments as discounted back to the time of the transaction, using the "applicable federal rate" published by the Internal Revenue Service for purposes of determining the present value of future annuity payments.) The $20,000 contract price represented 55% of the present value of the 60 future payments.

Expressed as an annual rate of interest, the discount charged by a factoring company can be presented in either of two related ways: (i) as a nominal or "mortgage-equivalent" annual rate computed in the same fashion as the nominal rate on a conventional mortgage loan (i.e., twelve times the monthly rate at which interest accrues and is paid), or (ii) as a "true" annual interest rate representing the factoring company's internal rate of return on its investment. For Major's factoring transaction the mortgage-equivalent rate was 35.0 percent (annually), and the internal rate of return on the factoring company's $20,000 investment was 41.2 percent (annually).

In many cases the effective discount rate paid by a settlement recipient may exceed the rate set forth in the table, because a broker's commission, an attorney's fee or other transaction charge may have been deducted from the stated contract price in computing the amount actually paid to the settlement recipient. From the information available in court files NSSTA has no means of determining the amounts of these deductions.

For some payees who have entered into multiple factoring transactions the table includes data for two or more transactions. Some payees with transactions listed in the table may have entered into additional transactions that are not listed in the table, because the available court records do not clearly indicate the terms of those additional transactions.

DISCOUNTS CHARGED TO SETTLEMENT RECIPIENTS IN FACTORING TRANSACTIONS

Payee's Name and State(s) of Residence	Factored Payments			Aggregate Amount of Factored Payments	Applicable Federal Rate Used to Compute Present Value[1]	Present Value of Factored Payments	Contract Price for Factored Payments[2]	Contract Price as a Percent of Present Value	Discount Rate Charged by Factoring Company		Factoring Company
	Amount	No.	Interval						Mortgage-Equivalent Rate[3] (Annual)	Internal Rate of Return[4] (Annual)	
Allen, Michael LO	$618.24/mo.	37	9/01-9/04	$22,874.88	7.8%	$14,599	$8,754.90	60%	16.2%	17.5%	Windsor-Thomas
Alsabrook, Anita KY	$250/mo. $200/mo.	119 120	1/97-11/06 12/06-11/16	$29,750.00 $24,000.00	7.6% 7.6%	$21,081 $8,614	$7,795.04 $1,800.00	37% 21%	37.5% 19.3%	44.6% 21.1%	Wentworth
Beam, Suzette IA	$100,000.00 $350.00	1 30	3/00 9/97-2/00	$100,000.00 $10,500.00	8.2% 7.6%	$79,796 $9668	$47,024.24 $7,162.00	59% 74%	26.6% 36.9%	30.1% 43.8%	Wentworth
Becker, Donald IA, FL	$2300/yr.	4	3/99-3/02	$9,200.00	7.8%	$7,326	$4,319.81	59%	26.1%	29.5%	Western/ Met. Mortgage
Berghman, Earle FL, NH	$500.00/mo. $25,000.00	37 1	5/96-5/99 5/99	$43,500.00	6.6%	$37,209	$25,500.25	69%	22.8%	25.3%	Wentworth
Bolden, James CT	$1,000/mo. $15,000.00 $19,500.00 $40,000.00	120 1 1 1	11/96-10/06 11/98 11/03 11/08	$120,000 $ 74,500	8.0% 7.6%	$82,897 $43,837	$55,000.00 $24,980.00	66% 57%	17.8% 17.2%	19.3% 18.6%	Settlement Capital/ Wentworth
Brubaker, J. Clause-CO	$1,000.00/mo. $1,100.00/mo.	9 26	6/97-2/98 3/98-4/00	$37,600.00	7.8%	$33,389	$23,384.27	70%	32.1%	37.3%	Wentworth
Byrd, Randy TN	$756.65/mo.	60	6/96-5/01	$45,399.00	8.0%	$37,694	19,300.00	51%	41.7%	50.7%	Wentworth

Payee's Name and State(s) of Residence	Factored Payments			Aggregate Amount of Factored Payments	Applicable Federal Rate Used to Compute Present Value[1]	Present Value of Factored Payments	Contract Price for Factored Payments[2]	Contract Price as a Percent of Present Value	Discount Rate Charged by Factoring Company		Factoring Company
	Amount	No.	Interval						Mortgage-Equivalent Rate[3] (Annual)	Internal Rate of Return[4] (Annual)	
Campbell, Richard NC	$800.00/mo.	35	3/97-1/00	$28,000.00	7.4%	$25,125	$19,200.00	76%	26.2%	29.6%	Wentworth
Chavis, Hartman TN, SC	$1611/mo.	35	4/96-2/99	$56,385.00	6.8%	$50,893	$37,000.00	73%	28.8%	32.9%	Wentworth
Cook, Melissa CA	$4,328.25/yr. $4,616.80 $7,213.75	2 1 1	6/97-6/98 6/99 6/03	$20,487.05	7.6%	$16,379	$9,000.00	55%	34.6%	40.6%	Wentworth
Cox, Thomas MD	$20,000 $35,000	1 1	4/98 4/03	$55,000	7.4%	$37,449	$18,500	49%	22.3%	24.7%	Stone Street
Davis, Eulysses GA	$400.00/mo.	120	12/97-11/07	$48,000.00	7.4%	$34,210	$16,000.00	47%	28.1%	32.0%	Windsor-Thomas
Dosch, Nicole MN	$4,422.43/yr.	10	3/98-3/07	$44,224.30	8.2%	$29,000	$13,000	44%	29.4%	33.7%	Wentworth
Dowling, John MI	$445.83/mo. $468.12/mo.* *Increasing 5% per year, compounded annually	8 112	3/97-10/97 11/97-2/07	$68,414.00	7.6%	$46,958	$22,000.00	47%	26.1%	29.4%	Wentworth
Flora, Antoine	$8,000.00 $8,000.00 $8,000.00 $300.00/mo.	1 1 1 35	8/98 8/99 8/00 2/98-12/00	$34,500.00	7.2%	$30,889	$25,240.37	82%	20.4%	22.4%	Wentworth
Getchell, Wayne ME	$800.00/mo. $17,500.00 $25,000.00	109 1 1	3/98 - 3/07 4/01 4/06	$129,700.00	7.2%	$91,626	$46,000.00	50%	23.6%	26.3%	Windsor-Thomas

Payee's Name and State(s) of Residence	Factored Payments			Aggregate Amount of Factored Payments	Applicable Federal Rate Used to Compute Present Value[1]	Present Value of Factored Payments	Contract Price for Factored Payments[2]	Contract Price as a Percent of Present Value	Discount Rate Charged by Factoring Company		Factoring Company
	Amount	No.	Interval						Mortgage-Equivalent Rate[3] (Annual)	Internal Rate of Return[4] (Annual)	
Guthrie, Rick FL	$583/mo.* *Life-contingent	120	5/96-4/06	$69,960.00	7.0%	$48,600	$18,000.00	37.0%	37.0%	44.0%	Wentworth
Hicks, Christopher OK	$1,000/mo. $1,500 mo.	32 26	5/97-12/99 1/00-2/02	$71,500	7.8%	$58,227	$37,500.00	64%	26.2%	29.6%	Wentworth
Holland, Ralph NC	$198/mo. $9,900	16 1	11/1/97-2/1/99 7/5/08	$13,068.00	7.6%	$7512	$5165.89	69%	13.7%	14.6%	Wentworth
Jones, Cynthia	$543.73/mo. $300.00/mo.	48 60	5/97-4/01 5/01-4/06	$26,099.04 $18,000.00	7.8% 7.8%	$22,475 $11,218	14,508.00 3,387.00	65% 30%	32.5% 27.7%	37.8% 31.5%	Wentworth
Jones, Richard MO	$1,000.00/mo.	120	4/1/97-3/1/07	$120,000.00	7.8%	$84,143	$39,311.34	47%	28.7%	32.8%	Wentworth
Jones, Sylvia	$543.73/mo. $325.00/mo.	36 60	6/97-5/00 7/00-6/05	$39,074.28	8.2%	$30,080	16,746.00	56%	30.8%	35.6%	Wentworth
Kekuewa, Burgundy HI	$20,000/yr. $10,000 $20,000 $25,000	2 1 1 1	4/97-4/98 8/02 8/07 8/12	$40,000.00 $55,000.00	6.6% 8.2%	$36,167 $21,579	$23,500.00 $ 6,500.00	65% 30%	35.0% 19.5%	41.2% 21.4%	Wentworth
Keller, Michael WI	$500.00/mo.	94	12/97-9/05	$47,000.00	7.2%	$36,248	$22,412.00	62%	22.2%	24.6%	Windsor-Thomas
Lorah, Wade VA, NC	$11,000.00 $11,000.00 $64,400.00	1 1 1	7/97 7/98 7/98	$86,400.00	8.0%	$76,269	$55,343.00	73%	28.0%	31.9%	Wentworth
Lovin, Kenneth VA	$1,000/mo. $5,000 $25,000	111 1 1	6/96-8/05 10/96 10/01	$141,000.00	7.6%	$102,029	$59,500.00	58%	22.0%	24.3%	Wentworth

Payee's Name and State(s) of Residence	Factored Payments			Aggregate Amount of Factored Payments	Applicable Annual Rate Used to Compute Present Value[1]	Present Value of Factored Payments	Contract Price for Factored Payments[2]	Contract Price as a Percent of Present Value	Discount Rate Charged by Factoring Company		Factoring Company
	Amount	No.	Interval						Mortgage-Equivalent Rate[3] (Annual)	Internal Rate of Return[4] (Annual)	
Lynch, James KA	$250.00/mo.	116	10/95-5/05	$368,000.00	7.6%	$97,324	$31,650.00	33%	17.6%	19.1%	Windsor-Thomas
	$15,000.00	1	6/00								
	$25,000.00	1	6/05								
	$40,000.00	1	6/10								
	$50,000.00	1	6/15								
	$85,000.00	1	6/20								
	$124,000.00	1	6/25								
Mackey, Tonya MI	$478.73/mo.	36	3/97-2/00	$17,234.28	7.6%	$15,432	9,937.13	64%	40.3%	48.6%	Wentworth
Magee, Jerry MS	$400.00/mo.	48	9/97-8/01	$19,200	8.0%	$16,364	$9,125.00	56%	40.5%	48.9%	Wentworth
Major, Isaac MI	$730/mo.	60	3/97-2/02	$43,800.00	7.4%	$36,522	$20,000	55%	35.0%	41.2%	Wentworth
Marion, Crystal NY	$500.00/mo.	85	9/95-9/02	$82,500.00	7.6%	$57,412	$34,632.00	60%	19%	20.8%	Windsor-Thomas
	$40,000.00	1	10/02								
McCollum, Odessa	$425.00/mo.	36	8/96-7/99	$15,300.00	8.2%	$13,629	7,886.00	58%	51.6%	65.8%	Wentworth
Parker, Patricia FL	$20,000.00	1	5/99	$20,000.00	7.4%	$17,976	$8,400.00	47%	59.4%	78.6%	Windsor-Thomas
Peters, John TN	$274.34/mo.	77	5/97-9/03	$21,124.18	7.8%	$16,711	$7,660.00	46%	39.4%	47.3%	Singer

Payee's Name and State(s) of Residence	Factored Payments			Aggregate Amount of Factored Payments	Ag[redacted] Rate Used to Compute Present Value[1]	Present Value of Factored Payments	Contract Price for Factored Payments[2]	Contract Price as a Percent of Present Value	Discount Rate Charged by Factoring Company		Factoring Company
	Amount	No.	Interval						Mortgage-Equivalent Rate[3] (Annual)	Internal Rate of Return[4] (Annual)	
Phelps, Kimberly MN	$425.79/mo. $468.56/mo. $512.62/mo. $558.00/mo. $604.74/mo. $652.88/mo. $702.47/mo. $753.54/mo. $33,600	10 12 12 12 12 12 12 12 1	6/97-3/98 4/98-3/99 4/99-3/00 4/00-3/01 4/01-3/02 4/02-3/03 4/03-3/04 4/04-3/05 3/00	$88,891.62	7.8%	$61,988	$36,448.72	59%	26.1%	29.5%	Wentworth
Presley, Rosemary GA	$500.00/mo. $6,749.87 $8,297.73 $12,765.03	201 1 1 1	10/95-6/12 8/97 1/00 1/05	$128,312.63	7.6%	$76,369	$42,256.00	55%	18.4%	20.0%	Windsor-Thomas
Pridemore, Dean PA, MI, OH	$2,370/mo.	87	12/96-2/04[5]	$206,190.00	8.0%	$156,508	$91,780.00	59%	25.4%	28.6%	Wentworth
Pridgen, Samuel NC	$500/mo. $10,000 $15,000	47 1 1	4/97-2/01 3/98 3/01	$48,500.00	7.8%	$40,677	$27,000.00	66%	27.4%	31.1%	Wentworth
Purdie, Henry AL	$249.58/mo.	48	8/97-7/01	$11,979.84	8.2%	$10,174	$5,850.00	57%	38.8%	46.5%	Wentworth
Ramos, Roberts NY	$400/mo. $500/mo. $750/mo.	51 60 9	3/97-5/01 6/01-5/06 6/06-2/07	$57,150.00	7.6%	$39,162	$19,600.00	50%	24.2%	27.1%	Wentworth
Rich, Timothy TN	$392.00/semi-mo.	100	10/97-11/15/01	$39,200.00	7.6%	$33,636	$20,600.00	61%	34.3%	40.3%	Windsor-Thomas
Roberts, Donald MS	$801/mo.	60	11/95-10/00	$48,060.00	7.6%	$40,115	25,250.00	63%	28.9%	33.1%	Western/Met. Mortgage
Romano-Jackman, Cheryl MN	$556.10/mo.	23	9/97-7/99	$13,020.30	7.8%	$11,788	$8,291.06	70%	35.7%	42.1%	Wentworth

Payee's Name and State(s) of Residence	Factored Payments			Aggregate Amount of Factored Payments	Applicable Federal Rate Used to Compute Present Value[1]	Present Value of Factored Payments	Contract Price for Factored Payments[2]	Contract Price as a Percent of Present Value	Discount Rate Charged by Factoring Company		Factoring Company
	Amount	No.	Interval						Mortgage-Equivalent Rate[3] (Annual)	Internal Rate of Return[4] (Annual)	
Severson, Peter WI IL	$17,720.00 $22,720.00 $27,720.00	1 1 1	3/00 3/05 3/10	$68,160.00	7.6%	$33,865	$13,700.00	40%	18.6%	20.3%	Windsor-Thomas
Smith, Kimberly IL	$500.00/mo. $10,000.00 $20,000.00 $350.00/mo. $17,500.00	60 1 1 65 1	4/97-3/02 9/97 9/02 4/02-8/07 9/07	$40,000.00 $60,250.00	7.8% 8.0%	$34,707 $34,386	$29,158.00 $ 5,000.00	84% 15%	17.9% 37.8%	19.4% 45.1%	Wentworth
Stanley, Brian TX	$607.00/mo.	60	9/97-8/02	$36,420.00	7.6%	$30,399	$18,075.49	59%	31.9%	37.0%	Wentworth
Stinette, Aeysha NY	$35,000	1	10/98	$35,000.00	8.2%	$29,508	$18,000.00	61%	31.1%	35.9%	Wentworth
Tarp, Melissa CA	$553/mo. $553/mo.	120 60	5/96-4/06 5/06-4/11	$66,360.00 $33,180.00	7.0% 7.6%	$48,089 $13,397	$23,000.00 $ 1,700.00	48% 13%	26.8% 24.5%	30.3% 27.5%	Wentworth
Turner, William CA	$675.50 $1,000.00/mo.	1 32	4/01 5/01-12/03	$35,675.50	8.2%	$21,623	$14,177.00	66%	16.1%	17.3%	Windsor-Thomas
Vnuk, Daniel MN	$440.00/mo. $4,000	36 1	3/97-2/00 8/97	$19,840.00	7.6%	$18,044	$12,000.00	67%	43.8%	53.7%	Wentworth
White, Raymond NY	$500.00/mo.	36	8/96-7/99	$18,000.00	8.2%	$15,945.00	$9,900.00	62%	43.1%	52.7%	Wentworth

1 The present value of factored payments is computed in each case using the "applicable federal rate" for determining the present value of an annuity, as published by the Internal Revenue Service ("IRS") for the month of the factoring transaction.

2 The contract price is the amount of the payment by the factoring company (net of any "underwriting," "administration" or other fees deducted by the factoring company) as identified in the court filing which are the source for this table.

3. The [redacted]gage-equivalent rate is the nominal annual rate of interest that the payee wou[redacted]ying if, in lieu of "selling" the factored payments and receiving the indicated [redacted]ct price, the [redacted] had obtained a loan in the same amount and had used the factored payments [redacted]ff the loan in equal monthly installments equivalent to monthly payments [redacted]ventional mortgage loan. For example, payee L in the table "sold" 60 monthly payments of $730.00 each and received a contract price of $20,000.00. If L had instead obtained a loan for $20,000.00, payable in 60 equal monthly installments of $730.00, the nominal annual interest rate on that loan (i.e., twelve times the rate at which interest accrues and is paid each month) would have been 35%.

4. The internal rate of return is the annual rate at which the factored payments must be discounted (assuming monthly compounding) in order for their discounted present value to equal the contract price paid by the factoring company. Viewed from a different perspective, the internal rate of return is the factoring company's pre-tax return when it invests the contract price and collects the factored payments.

5. The Purchase Agreement in this case indicates that the factored payments were to end on April 14, 2004 — two months after the 87th payment.

NATIONAL STRUCTURED SETTLEMENTS
TRADE ASSOCIATION

March, 1999

*Summary of Tonya Mangum Case**

- In January, 1996, Tonya Mangum of Durham, North Carolina, entered into a structured settlement of a lawsuit growing out of an automobile accident in 1991. The settlement provided for an immediate cash payment of $100,000, plus monthly annuity payments of $750.00.

- In March, 1998, Ms. Mangum entered into a factoring transaction under which Settlement Funding L.L.C. (d/b/a Peachtree Settlement Funding), a Georgia-based factoring company, agreed to purchase $350.00 of each of the monthly annuity payments for the ensuing seven years. The aggregate (undiscounted) amount of the payments purchased by Peachtree was $29,400. Peachtree paid $13,756. Peachtree's discount amounts to a mortgage-equivalent interest rate of 25.21% per year.

- The Peachtree questionnaires signed by Ms. Mangum indicate that at the time of her factoring transaction she was disabled and was unable to work because of back problems. She had one child and stated that her annual income, apart from her monthly annuity payments, consisted of social security benefits of $11,400.

- In September, 1998, Peachtree sued Ms. Mangum in state court in New Jersey. In November, 1998, Peachtree obtained a default judgment against Ms. Mangum in the amount of $33,333.44.

* The National Structured Settlement Trade Association ("NSSTA") has compiled this and other, similar summaries of structured settlement factoring transactions from the information contained in the pleadings filed in lawsuits that have arisen from those transactions. In most cases the lawsuits are collection actions brought by factoring companies against their own customers. The source for this summary is the pleadings filed in Settlement Funding L.L.C. v. Tonya Mangum, Union Cty., N.J. Sup. Ct. Docket No. UNN-L4963-98. Copies of the pleadings are available through NSSTA.

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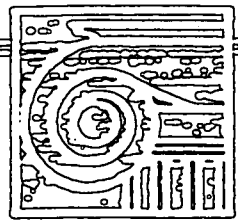

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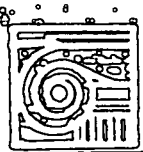

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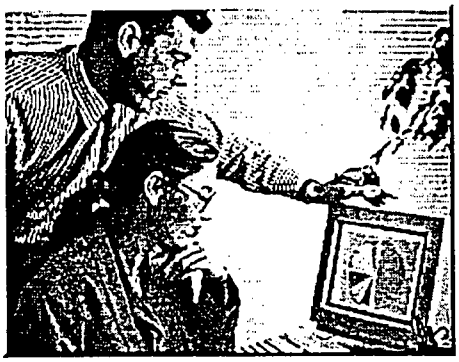

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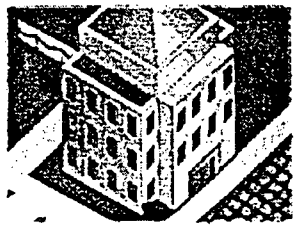

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- Mortgage Note
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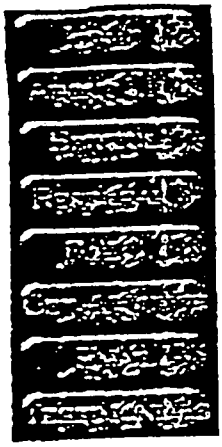

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The Latest On Military Retirement Funding – ~~updated~~ revised November, 1997

At the present time, because of changes in the governments position on assignability, it may not be possible to locate an underwriter for military retirement or VA disability deals. Virtually all the main stream funders have terminated servicing these types of income streams. However, recently IFS was successful in placing a limited number of these deals, and we are presently evaluating similar deals with our underwriters on an individual basis.

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NEW MOBILITY

DISABILITY CULTURE & LIFESTYLE

JANUARY 1999

New Mobility's Person of the Year: Jim Lubin

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Structured Settlements Work

But Beware of Offers to Cash them Out

BY KEITH D. LEMONS, ESQ.

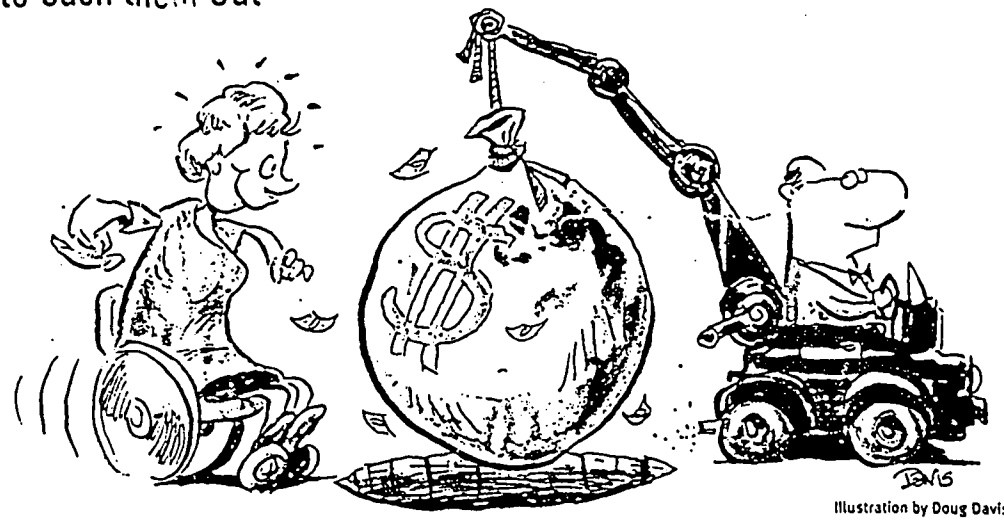

Illustration by Doug Davis

A few years ago, Greta Resch* was seriously injured in an auto accident. I represented her, and secured a settlement of $430,000. Greta took almost all of it in cash because she was convinced she could handle this money wisely. Recently, she was sued for a $1,900 credit card balance that she was unable to pay. A lifetime of security had dwindled to nothing.

As a plaintiff's attorney for 20 years, I've learned that becoming disabled is difficult, and that achieving financial independence is even tougher. But it's nothing short of tragic when funds from a settlement disappear because an injured person cannot handle large sums of money.

For that reason, I urge my clients to take their settlements in a way that guarantees their long-term financial security. Very often, this requires what is known as a "structured settlement."

Recognized and encouraged by Congress since 1982, structured settlements are similar to annuities. They provide guaranteed tax-free payments in a way that is carefully designed to meet a person's long-term needs. The tax-free status generally makes structured settlements more valuable over time than single, lump-sum settlements.

Mary Leigh Martin was seriously injured in 1993, and I helped her secure a large settlement. However, Mary took only $100,000 in immediate cash. The rest was a structured settlement that would pay her $1.6 million over the next 34 years. It is a virtual certainty that Mary could not have realized that sort of gain by investing on her own.

Why did I advise her not to take the money in a lump sum? Because it is my experience that, with few exceptions, injured people receiving large cash settlements lose the money quickly—often spending between $120,000 and $150,000 per year. I wish I was exaggerating, but I am not. This phenomenon is not a function of education, intelligence, race or any other factor I can pinpoint other than the frailty of human nature.

For Mary, even a structured settlement was not enough protection. A few months ago, she informed me that she had already spent the $100,000 cash settlement. She then showed me a contract in which she had sold portions of her structured settlement for the next nine years in exchange for cash. That cash, too, is gone, and Mary now has to wait eight years for her next payment. Worse, she received only about half of what her payments were worth.

What Mary encountered is known in the trade as the "gray market." Gray market companies use phone banks and advertising campaigns to induce settlement recipients to sell their future payments for discounted up-front cash. The potential profits for gray market companies are huge—injured people have been convinced to sell years of payments for as little as 30 cents on the dollar.

Chris Melnick is another example. When he was 13, he became paraplegic in a swimming pool accident. In a court-approved structured settlement, he received a lump sum of about $850,000 and monthly payments of about $2,000. Three months after he turned 18, Chris signed a contract with a gray market company, agreeing to sell $71,000 of future payments for $37,500. A few months later, the company claimed Chris had defaulted, and it filed a civil claim for the payments plus legal expenses. The court ruled in favor of the company.

Throughout the country, the gray market is endangering the financial security of disabled Americans. And those who sell their structured settlement payments to gray market buyers are, in my opinion, literally selling their futures.

Very few people, injured or not, get that one shot in life to meet their financial needs for life. To take advantage of this opportunity, it is vitally important to remember one's long-term needs. In spite of gray market operators, a balanced structured settlement—and a commitment to live within its terms—can do just that.

Disability is a painful disruption of life, but structured settlements can help return stability. Isn't that what justice is all about? NM

*All names have been changed for privacy.

Keith D. Lemons is the senior partner of Keith D. Lemons & Associates, a litigation law firm based in Fort Worth, Texas.

NOD

NATIONAL ORGANIZATION ON DISABILITY

910 Sixteenth Street, NW, Washington, DC 20006

February 19, 1999

The Honorable William Roth
104 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Re: Statement of Support for HR 263, The Structured Settlement Protection Act

Dear Mr. Chairman:

The National Organization on Disability (N.O.D.) promotes the full and equal participation of America's 54 million men, women and children with disabilities in all aspects of life. N.O.D. was founded in 1982 at the conclusion of the United Nations International Year of Disabled Persons. N.O.D. is the only national disability network organization concerned with all disabilities, all age groups and all disability issues.

I write to you to express N.O.D.'s strong support for HR 263, The Structured Settlement Protection Act. Congress created structured settlements to provide long-term financial security for victims of serious injuries, many of whom are permanently disabled. Structured settlements meet the victims' ongoing expenses for medical care, living needs, and family support, and serve the public good by ensuring that victims don't dissipate their settlements and wind up on public assistance.

For these reasons we are extremely troubled at the emergence of factoring companies that convince injury victims, including persons with disabilities, to sell structured settlement payments for a deeply discounted cash lump sum. Such transactions completely undermine the long-term financial security of a structured settlement and threaten the very livelihood of an otherwise extremely vulnerable population – those of us with disabilities. And the steep financial discounts that disabled Americans often are persuaded to accept would be unacceptable to any fair-minded person.

We are heartened that several state attorneys general are looking into this issue. Several legislatures are also considering bills to curb these purchases of future structured settlement payments by factoring companies.

There needs to be a strong federal law to protect the disabled from this nationwide problem which jeopardizes the long-term financial security of these injured victims and their families. N.O.D. therefore strongly supports HR 263 and urges you to give it your prompt attention before it results in the further disablement of our nation's disabled. Thank you very much, Mr. Roth, for your consideration.

Sincerely,

Alan A. Reich
President

202-293-5960 TDD 202-293-5968 fax 202-293-7999 www.nod.org

NATIONAL STRUCTURED SETTLEMENTS
TRADE ASSOCIATION

November 1, 1998

RECENT COMMENTS REGARDING STRUCTURED SETTLEMENTS AND STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Senator John Chafee:

Structured settlements were developed because of the pitfalls associated with the traditional lump sum form of recovery in serious personal injury cases, where all too often a lump sum meant to last for decades or even a lifetime swiftly eroded away. Structured settlements have proven to be a very valuable tool. They provide long-term financial security in the form of an assured stream of payments to persons suffering serious, often profoundly disabling, physical injuries. These payments enable the recipients to meet ongoing medical and basic living expenses without having to resort to the social safety net. . . .

I am very concerned that in recent months there has been sharp growth in so-called structured settlement factoring transactions. In these transactions, companies induce injured victims to sell off future structured settlement payments for a steeply-discounted lump sum, thereby unraveling the structured settlement and the crucial long-term financial security that it provides to the injured victim. These factoring company purchases directly contravene the intent and policy of Congress in enacting the special structured settlement tax rules. [144 Cong. Rec. S11340 (October 2, 1998).]

Senator Max Baucus:

Over the almost two decades since we enacted these tax rules [Internal Revenue Code Sections 104(a)(2) and 130], structured settlements have proven to be a very effective means of providing long-term financial protection to persons with serious, long-term physical injuries through an assured stream of payments designed to meet the victim's ongoing expenses for medical care, living and family support. Structured settlements are voluntary agreements reached between the parties that are negotiated by counsel and tailored to meet the specific medical and living needs of the victim and his or her family, often with the aid of economic experts. . . .

I now find that this careful planning and long-term financial security for the victim and his or her family can be unraveled in an instant by a factoring company offering quick cash at a steep discount. What happens next month or next year when the lump sum from the

factoring company is gone, and the stream of payments for future financial support is no longer coming in? These structured settlement factoring transactions place the injured victim in the very predicament that the structured settlement was intended to avoid. [144 Cong. Rec. S11499-500 (October 5, 1998).]

Representative E. Clay Shaw, Jr.:

As long-time supporters of structured settlements and the congressional policy underlying such settlements, we have grave concerns that these factoring transactions directly undermine the policy of the structured settlement tax rules. The Treasury Department shares these concerns. [144 Cong. Rec. E1420 ([daily ed.] (July 24, 1998).]

United States Department of the Treasury:

Congress enacted favorable tax rules intended to encourage the use of structured settlements -- and conditioned such tax treatment on the injured person's inability to accelerate, defer, increase or decrease the periodic payments -- because recipients of structured settlements are less likely than recipients of lump sum awards to consume their awards too quickly and require public assistance . . .

These "factoring" transactions directly undermine the Congressional objective to create an incentive for injured persons to receive periodic payment as settlements of personal injury claims. [*General Explanations of the Administration's Revenue Proposals,* Fiscal Year 1999 Budget of the United States Government, February, 1998.]

Illinois Representative David Leitch:

I'm just very concerned about the people who are being victimized by these people who are taking a very, very deep discount in these settlement amounts, and who are then left penniless without resources in the future. [Illinois House Debate Transcript, April 10, 1997.]

Thomas H. Countee, Jr., Executive Director of the National Spinal Cord Injury Association:

Over the past 16 years, structured settlements have proven to be an ideal method for insuring that persons with disabilities, particularly minors, are not tempted to squander resources designed to last years or even a lifetime.

This is why the National Spinal Cord Injury Association is so deeply concerned about the emergence of companies that purchase payments intended for disabled persons at drastic discount. This strikes at the heart of the security Congress intended when it created structured settlements. The practice of buying the payments of injured parties in exchange for only 50 or 60 cents per present-value dollar strikes me as abusive and inappropriate. [September 8, 1998 Letter to Sen. William Roth.]

Editorial: "Settlements Should Last":

[E]ven if the lump sum paid to the claimant [by a factoring company] is not quickly squandered on some form of immediate gratification, it is certain to disappear more quickly than the original benefit. That can put claimants between a rock and a hard place: They likely still have sizable expenses but no source of adequate income to cover them. . . .

Where does that leave them -- especially if circumstances of their claim have left them unable to earn a living? In all likelihood, at the doorstep of the taxpayer who finances Medicare, Medicaid and public assistance programs. [*Business Insurance*, August 10, 1998.]

Chicago Trial Lawyer Robert A. Clifford:

I represent many people who are hurt or disabled through no fault of their own.

They are victimized once in an accident. The greater tragedy for them can come later when they are victimized again, this time by slick discounters.

Other than the initial injury, I can't think of anything worse. ["Stream of payments shields some injury victims from unwise decisions, maximizes compensation," *Chicago Daily Law Bulletin*, April 25, 1998.]

VISITOR REGISTRATION SHEET

Name of Committee J-1 Date 4-8-99

VISITORS: Please sign below and return to Committee Clerk. (1) of 2

NAME	FIRM OR STATE AGENCY AND ADDRESS
JOHN R. MCARTHUR	GENERAL ELECTRIC COMPANY
Eddie Biddix	
Cynthia Biddix	
JASON RHODES	
Sandy Sands	WCSR
James Terlizzi	NAT'L ASSOC. SETTLEMENT PURCHASERS
Cindy Ellen	NCRMA
Fran Preston	NCRMA
J. Porter	Bond & Associates
Kristin David	Legislative Intern
Charles Cramer	NCCTL
Dave Horne	Smith H
Amy Jo Baum	NCMS
Phil Telfer	AGO
Casey Dix	DOT
Lynn Bonner	N&O
Elizabeth Kuniholm	NCATA
[illegible]	[illegible]
Michael Phillips	Private Citizen
John McMillan	Manning Fulton & Skinner PA
Chris Sinclair	NC Mut.

VISITOR REGISTRATION SHEET

e of Committee J-1 Date 4-8-99

VISITORS: Please sign below and return to Committee Clerk.

(2)

NAME	FIRM OR STATE AGENCY AND ADDRESS
David Lowman	Hunton & Williams, Richmond Va
Randy Dyer	Nat. structural Set. Assn, Wash. DC
Jasen Valaani	Nationwide
Daphne Beatty	GE Financial Assurance
Robert Paschall	Young, Moore & Henderson
Georgen Teegen	Moore & Van Allen
Mike Jamos	ACORA
Amy Fullbright	Hunton & Williams
Alan Miles	Bondy & Dixon LLP

1999

SENATE JUDICIARY I COMMITTEE

MINUTES

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 13, 1999

The Senate Judiciary I Committee met on April 13, 1999 at 9:30 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Hartsell to explain **Senate Bill 245 – 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.**

Senator Hartsell moved to adopt a Proposed Committee Substitute to Senate Bill 245 for discussion. The motion carried by a majority voice vote.

Professor Caroline N. Brown – UNC School of Law – was recognized to speak on the bill.

Senator Hartsell moved to amend the Proposed Committee Substitute on Page 10, Line 3. The motion carried by a majority voice vote. (Amendment is attached.)

John Loughridge, Jr. – Wachovia Bank, Winston-Salem, N. C. – was recognized to speak on the bill.

Senator Hartsell moved to give the Proposed Committee Substitute to Senate Bill 245 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Hartsell was recognized to explain **Senate Bill 246 – 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.**

Senator Hartsell moved to adopt a Proposed Committee Substitute to Senate Bill 246 for discussion. The motion carried by a majority voice vote.

Jim Drennan – Institute of Government – was recognized to explain the details of the Proposed Committee Substitute.

Jim Carr – Clerk of Court, Durham County – was recognized to answer questions from the Committee.

Joan Branson – Institute of Government – was recognized to answer questions from the Committee.

Senator Rand moved to amend the Proposed Committee Substitute on Page 4, Line 22. The motion carried by a majority voice vote. (Amendment attached.)

Senator Hartsell moved to give the Proposed Committee Substitute to Senate Bill 246 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Rand was recognized to explain **Senate Bill 601 – AN ACT TO PROVIDE THAT THE SECRETARY OF CORRECTION HAS SOLE AUTHORITY TO DESIGNATE THE UNIFORMS WORN BY INMATES CONFINED IN THE DIVISION OF PRISONS.**

Senator Rand moved to adopt a Proposed Committee Substitute to Senate Bill 601 for discussion. The motion carried by a majority voice vote.

Senator Gulley moved to give the Proposed Committee Substitute to Senate Bill 601 a favorable report. The motion carried by a majority voice vote.

Senator Rand was recognized to explain **Senate Bill 172 – AN ACT TO MAKE THE POSSESSION OF BLUE LIGHTS ILLEGAL.**

Senator Rand moved to reconsider the vote by which Senate Committee Substitute Bill 172 was given a favorable report (March 11, 1999 meeting). The motion carried by a majority voice vote.

Senator Rand moved to adopt a Proposed Committee Substitute to Senate Committee Substitute Bill 172 for discussion. The motion carried by a majority voice vote.

Senator Clodfelter moved to give the new Committee Substitute for Senate Bill 172 a favorable report. The motion carried by a majority voice vote.

Senator Carpenter was recognized to explain **Senate Bill 170 – AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT AND TO RAISE THE STANDARD OF PROOF IN PROCEEDINGS FOR CIVIL CONTEMPT.**

Senator Carpenter moved to adopt a Proposed Committee Substitute to Senate Bill 170 for discussion. The motion carried by a majority voice vote.

Senator Clodfelter, Chairman of the Subcommittee, was recognized to explain the Proposed Committee Substitute.

Senator Soles moved to amend the Proposed Committee Substitute on Page 2, Line 45. The motion carried by a majority voice vote. (Amendment #1 attached.)

Senator Rand moved to amend the Proposed Committee Substitute on Page 2, Line 23. The motion carried by a majority voice vote. (Amendment #2 attached.)

Senator Carpenter moved to give the Proposed Committee Substitute to Senate Bill 170 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Soles, as Acting Chairman, recognized Senator Cooper to continue the discussion of the Proposed Committee Substitute to **Senate Bill 746 - AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.**

David Lowman, with Hunton & Williams, Attorneys at Law, was recognized to answer questions from the Committee.

Senator Cooper moved to give the Proposed Committee Substitute to Senate Bill 746 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, April 13, 1999
TIME: 9:30 - 11:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 170	Restructure Civil Contempt	Carpenter
SB 172	Possession of Blue Lights Illegal	Rand
SB 176	Salyer/Forfeiture of Property Rights	Hartsell
SB 245	Letters of Credit UCC Rewrite	Hartsell
SB 246	Appeal or Transfer from Clerk	Hartsell
SB 601	DOC Prisoners' Uniforms	Rand
SB 746	Structured Settlement Protection Act	Cooper

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 13, 1999

SB 170	Restructure Civil Contempt	Carpenter
SB 172	Possession of Blue Lights Illegal	Rand
SB 176	Slayer/Forfeiture of Property Rights	Hartsell
SB 245	Letters of Credit UCC Rewrite	Hartsell
SB 246	Appeal or Transfer from Clerk	Hartsell
SB 601	DOC Prisoners' Uniforms	Rand
SB 746	Structured Settlement Protection Act	Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 245*

Short Title: Letters of Credit UCC Rewrite/AB. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

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 that person's 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 timely failure 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 that 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 claim for relief accrues, whichever occurs later. A claim for relief 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 a 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 right 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 right 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 245*
Proposed Committee Substitute S245-PCS6620-RU

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 a 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: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: April 9, 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)

EXCERPT FROM

UNIFORM COMMERCIAL CODE
REVISED ARTICLE 5. LETTERS OF CREDIT

PREFATORY NOTE

Reason for Revision

When the original Article 5 was drafted 40 years ago, it was written for paper transactions and before many innovations in letters of credit. Now electronic and other media are used extensively. Since the 50's, standby letters of credit have developed and now nearly $500 billion standby letters of credit are issued annually worldwide, of which $250 billion are issued in the United States. The use of deferred payment letters of credit has also greatly increased. The customs and practices for letters of credit have evolved and are reflected in the Uniform Customs and Practice (UCP), usually incorporated into letters of credit, particularly international letters of credit, which have seen four revisions since the 1950's; the current version became effective in 1994 (UCP 500). Lastly, in a number of areas, court decisions have resulted in conflicting rules.

Prior to the appointment of a drafting committee, the ABA UCC Committee appointed a Task Force composed of knowledgeable practitioners and academics. The ABA Task Force studied the case law, evolving technologies and the changes in customs and practices. The Task Force identified a large number of issues which they discussed at some length, and made recommendations for revisions to Article 5. The Task Force stated in a foreword:

> "As a result of these increases and changes in usage, practice, players, and pressure, it comes as no surprise that there has been a sizable increase in litigation. Indeed, the approximately 62 cases reported in the United States in 1987 constituted double the cumulative reported cases up to 1965 ... .
>
> Moreover, almost forty years of hard use have revealed weaknesses, gaps and errors in the original statute which compromise its relevance. U.C.C. Article 5 was one of the few areas of the Uniform Commercial Code which did not benefit from prior codification and it should come as no surprise that it may require some revision ... .
>
> Measured in terms of these areas which are vital to any system of commercial law, the current combination of statute and case law is found

wanting in major respects both as to predictability and certainty. What is at issue here are not matters of sophistry but important issues of substance which have not been resolved by the current case law/code method and which admit of little likelihood of such resolution." (45 Bus. Lawyer 1521, at 1532, 1535-6)[1]

The Drafting Committee began its deliberations with the Task Force Report in hand. The final work of the Drafting Committee varies from many of the suggestions of the Task Force.

* * * *

Benefits of Revised Article 5 in General

Independence Principle. Revised Article 5 clearly and forcefully states the independence of the letter of credit obligations from the underlying transactions that was unexpressed in, but was a fundamental predicate for, the original Article 5 (Sections 5-103(d) and 5-108(f)). Certainty of payment, independent of other claims, setoffs or other causes of action, is a core element of the commercial utility of letters of credit.

Clarifications. The revision authorizes the use of electronic technology (Sections 5-102(a)(14) and 5-104); expressly permits deferred payment letters of credit (Section 5-102(a)(8)) and two party letters of credit (Section 5-102(a)(10)); provides rules for unstated expiry dates (Section 5-106(c)), perpetual letters of credit (Section 5-106(d)), and non-documentary conditions (Section 5-108(g)); clarifies and establishes rules for successors by operation of law (Sections 5-102(a)(15) and 5-113); conforms to existing practice for assignment of proceeds (Section 5-114); and clarifies the rules where decisions have been in conflict (Section 5-106, Comment 1; Section 5-108, Comments 1, 3, 4, 7, and 9; Section 5-109, Comments 1 and 3; Section 5-113, Comment 1; and Section 5-117, Comment 1).

Harmonizes with International Practice

The UCP is used in most international letters of credit and in many domestic letters of credit. These international practices are well known and employed by the major issuers and users of letters of credit. Revisions have been made to Article 5 to coordinate the Article 5 rules with current international practice (e.g., deferred payment obligations, reasonable time to examine documents, preclusion, non-documentary conditions, return of documents, and irrevocable unless stated to be revocable).

Benefits of Revised Article 5 to Issuers

Consequential Damages. Section 5-111 precludes consequential and punitive damages. It, however, provides strong incentives for Issuers to honor, including provisions for attorneys fees and expenses of litigation, interest, and specific performance. If consequential and punitive damages were allowed, the cost of letters of credit could rise substantially.

Statute of Limitation. Section 5-115 establishes a one year statute of limitation from the expiration date or from accrual of the cause of action, whichever occurs later. Because it is usually obvious to all when there has been a breach, a short limitation period is fair to potential plaintiffs.

Choice of Law. Section 5-116 permits the issuer (or nominated party or adviser) to choose the law of the jurisdiction that will govern even if that law bears no relation to the transaction. Absent agreement, Section 5-116 states choice of law rules.

Assignment of Proceeds. Section 5-114 conforms more fully to existing practice and provides an orderly procedure for recording and accommodating assignments by consent of the issuer (or nominated party).

Subrogation. Section 5-117 clarifies the subrogation rights of an Issuer who has honored a letter of credit. These rights of subrogation also extend to an applicant who reimburses and a nominated party who pays or gives value.

Recognition of UCP. Section 5-116(c) expressly recognizes that if the UCP is incorporated by reference into the letter of credit, the agreement varies the provisions of Article 5 with which it may conflict except for the non-variable provisions of Article 5.

Benefits of Revised Article 5 to Applicants

Warranties. Section 5-110 specifies the warranties made by a beneficiary. It gives the applicant on a letter of credit which has been honored a direct cause of action if a drawing is fraudulent or forged or if a drawing violates any agreement augmented by a letter of credit.

Strict Compliance. Absent agreement to the contrary, the issuer must dishonor a presentation that does not strictly comply under standard practice with the terms and conditions of the letter of credit (Section 5-108).

Subrogation. New Section 5-117 clarifies the parties' rights of subrogation if the letter of credit is honored.

Limitations on General Disclaimers and Waivers. Section 5-103(c) limits the effect of general disclaimers and waivers in a letter of credit, or reimbursement or other agreement.

Benefits of Revised Article 5 to Beneficiaries

Irrevocable. A letter of credit is irrevocable unless the letter of credit expressly provides it is revocable (Section 5-106(a)).

Preclusion. Section 5-108(c) now provides that the Issuer is precluded from asserting any discrepancy not stated in its notice timely given, except for fraud, forgery or expiration.

Timely Examination. Section 5-108(b) requires examination and notice of any discrepancies within a reasonable time not to exceed the 7th business day after presentation of the documents.

Transfers by Operation of Law. New Section 5-113 allows a successor to a beneficiary by operation of law to make presentation and receive payment or acceptance.

Damages. The damages provided are expanded and clarified. They include attorneys fees and expenses of litigation and payment of the full amount of the wrongfully dishonored or repudiated demand, with interest, without an obligation of the beneficiary to mitigate damages (Section 5-111).

* * * *

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/13/99

S. B. No. 245 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S245-PCS6620-RU

Rep.)
(Sen.) HARTSELL

1 moves to amend the bill on page 10, line 3

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "a.".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SB 245

GENERAL STATUTES COMMISSION'S REVISED ARTICLE 5 DRAFTING COMMITTEE MEMBERS

Caroline N. Brown
UNC School of Law
Chapel Hill, North Carolina

John H. Loughridge, Jr.
Wachovia Bank, N. A.
Winston-Salem, North Carolina

Christopher E. Leon
Womble Carlyle Sandridge & Rice, PLLC
Winston-Salem, North Carolina

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 246*

Short Title: Appeal or Transfer From Clerk. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

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. This section is subject to specific provisions in the General Statutes that provide otherwise and to case law.

(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 provided 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 the judge determines 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 to determine all remaining matters necessary to dispose of the action. 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. This section is subject to specific provisions in the General Statutes that provide otherwise and to case law.

(b) Transfer. -- Subject to 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 provided by law.

(g) Exception for Incompetency and Foreclosure Proceedings. -- Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes and foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred. Appeals from orders entered in these proceedings are governed by specific provisions in the applicable statutes to the extent those statutes conflict with this section.

(h) Exception for Partition Proceedings. -- The issue whether to order the partition or the sale 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 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's order or judgment shall contain findings of fact and conclusions of law to support 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 posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk may enter orders affecting the administration of the estate, unless a judge of the superior court by order limits 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 shall either remand the matter to the clerk for a

subsequent hearing or the judge shall, when the record is sufficient, resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the 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 any appropriate means authorized by the Administrative Office of the Courts. 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~~ of the superior court. 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 tranferred 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.~~ court. ~~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.~~ court. ~~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.~~ court. ~~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*
Proposed Committee Substitute S246-PCS1668-RU

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 any appropriate means authorized by the Administrative Office of the Courts. 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 tranferred 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
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MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: April 12, 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 in their judicial capacity. 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 after the Civil War and have not been materially changed since that time, although the court system itself has undergone significant changes. The divergence in practice that grew during the post-Civil War days of local courts survived the court unification effort of the 1950's and 1960's. This bill repeals many of the post-Civil War statutes and replaces them with a new Article 27A of Chapter 1 of the General Statutes that offers the possibility of achieving a more uniform treatment of appeals and transfers.

Clerks of court deal with three basic kinds of actions. Clerks enter orders in civil actions, typically in pre- or post-trial situations. They preside over 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.

Current Article 27 of Chapter 1 of the General Statutes provides a procedure for appeals from the clerk, including a rarely-followed procedure for making a record. The Article provides

some guidance in appeals and transfers of special proceedings, but another section (G.S. 1-399) in an article dealing only with special proceedings has conflicting language. 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 serve as a trap for the unwary estate lawyer who is not familiar with them.

The new Article 27A in Section 1 of this bill consists of three sections. The first section deals with appeals or transfers of issues heard by the clerk of superior court in civil actions, the second section deals with special proceedings, and the third section deals with estate matters. 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. In most civil actions in which the clerk exercises jurisdiction, the clerk's jurisdiction is concurrent 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 the procedure for appealing and allows either 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 return ("remand") the case to the clerk for final resolution. Subsection (b) provides that the matter on appeal 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 a default procedure, and if the statutes provide for a different procedure, that different 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". Consolidating these provisions, 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 one of these issues is not

pleaded but is raised in the course of hearing the special proceeding, the clerk should continue to hear the case, and the issue may then be appealed for a de novo review pursuant to subsection (e). The de novo standard of review on appeal is not explicitly set out in the current statutes but is widely followed in practice. 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 the procedure for appealing the clerk's final decision in a special proceeding and allows either 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 North Carolina 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--retain their own highly developed laws about transfer and appeal.

§ 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 on the standard of review on appeal 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 these 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 has been reported to the Commission that *Lowther* is not uniformly followed in the superior courts when estate matters are appealed, so that an attempt to codify practice is impossible. New § 1-301.3 follows 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 the procedure for appealing and allows either 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. If the record is insufficient, the judge may hear additional evidence on the disputed evidentiary issue.

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 record 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 as required in the current law.

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 S246 PCS1668-RU

Rep.)
Sen.) Rand

moves to amend the bill on page 4, line 22

( ) WHICH CHANGES THE TITLE

by ~~substituting~~ rewriting the line to read:

"an electronic recording device. A

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S601-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 601
THIS IS A DRAFT 7-APR-99 22:12:53
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: DOC Prisoners' Uniforms. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE SECRETARY OF CORRECTION HAS SOLE AUTHORITY TO DESIGNATE THE UNIFORMS WORN BY INMATES CONFINED IN THE DIVISION OF PRISONS.

The General Assembly of North Carolina enacts:

Section 1. Section 17.20 of S.L. 1998-212 is repealed.

Section 2. The Secretary of Correction has sole authority to designate the uniforms worn by inmates confined in the Division of Prisons.

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

SENATE BILL 601:
DOC Prisoners' Uniforms

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 8, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S601-CSRU-001		

SUMMARY: The Proposed Committee Substitute for Senate Bill 601 would repeal a provision in the 1998 Budget that requires prisoners of the Department of Corrections working in Davidson County to wear uniforms with horizontal stripes and color coded by inmate classification consistent with color-coding used by Davidson County's road crews.

CURRENT LAW: Section 17.20 of S.L. 1998-212 currently reads:

"REQUIRE INMATE ROAD SQUADS IN DAVIDSON COUNTY TO WEAR UNIFORMS IDENTIFYING THEM AS INMATES

Section 17.20. The Department of Correction and the Department of Transportation shall require all inmate road squads, maintenance road squads, and community work crews working in Davidson County to wear horizontally striped uniforms with stripes of three inches in width and color-coded by inmate classification in a manner consistent with the color-coding used by Davidson County for its road squads."

BILL ANALYSIS: Section 1 of the Proposed Committee Substitute for Senate Bill 601 repeals Section 17.20 of S.L. 1998-212 which would delete the requirement that Department of Corrections (DOC) inmates had to wear the same types of uniforms worn by inmates confined in Davidson County.

Section 2 specifies that the Secretary of Corrections has the sole authority for designating uniforms to be worn by State inmates.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 172

Short Title: Possession of Blue Lights Illegal. (Public)

Sponsors: Senators Rand; Carpenter, Carrington, Cooper, Hoyle, Kerr, Miller, Perdue, and Reeves.

Referred to: Judiciary I.

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE THE POSSESSION OF BLUE LIGHTS ILLEGAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-130.1 is amended by adding a new subsection to read:

"(c1) It is unlawful for any person to possess a blue light described in subsection (c) of this section in this State unless they are temporarily in possession of the light which is destined to be installed on a vehicle on which blue lights are authorized by subsection (d) of this section."

Section 2. This act becomes effective December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S172-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 172
THIS IS A DRAFT 7-APR-99 21:03:12
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Blue Lights Illegal. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN THE POSSESSION OF BLUE LIGHTS IS ILLEGAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-130.1 reads as rewritten:

"§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

. . . . .

(c) It is unlawful for any person to ~~install or activate or operate a blue light in or on any vehicle in this State. It is unlawful for any person to possess a blue light in or on any vehicle in this State.~~ possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this State, except for a publicly owned vehicle used primarily for law-enforcement purposes or any other vehicle used primarily by law-enforcement officers in the performance of their official duties. As used in this subsection, unless the context requires otherwise, "blue light" means an operable blue light ~~not sealed in the manufacturer's original package~~ which:

(1) Is not (i) being installed on, held in inventory for the purpose of being installed on, or held in inventory for the purpose of sale for installation

on a vehicle on which it may be lawfully operated or (ii) installed on a vehicle which is used solely for the purpose of demonstrating the blue light for sale to law enforcement personnel;

(1a) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

~~(d) The provisions of subsection (c) of this section do not apply to a publicly owned vehicle used primarily for law-enforcement purposes or any other vehicle used primarily by law-enforcement officers in the performance of their official duties.~~"

Section 2. This act becomes effective December 1, 1999 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 170

Short Title: Restructure Civil Contempt. (Public)

Sponsors: Senators Carpenter; and Ballance.

Referred to: Judiciary I.

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT AND TO RAISE THE STANDARD OF PROOF IN PROCEEDINGS FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 5A-21(b) reads as rewritten:

"(b) A person who is found in civil contempt may be imprisoned as long as ~~his~~ the civil contempt ~~continues,~~ continues but not to exceed 12 months, unless the contempt is failure by a person not arrested for the crime to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General Statutes. In that case, ~~he~~ the person may not be imprisoned more than 90 days unless ~~he~~ the person is arrested on probable cause."

Section 2. G.S. 5A-23(e) reads as rewritten:

"(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged contemnor. If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt. The facts must be established by clear and convincing evidence."

Section 3. This act is effective when it becomes law and applies to all proceedings for civil contempt held on or after that date. Section 1 of this act applies to all persons imprisoned for civil contempt on or after that date and to all persons currently imprisoned for civil contempt.

SENATE BILL 170:
Restructure Civil Contempt

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Carpenter
Date:	April 13, 1999	**Summary by:**	Jo B. McCants
Version:	S170-PCSSE-001		O. Walker Reagan, Committee Co-Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 170 amends the civil contempt law to provide that the period of imprisonment for a person found in civil contempt shall not exceed 30 days. However, a person who has not purged himself or herself of the contempt within the period of imprisonment may be recommitted for one or more successive periods of imprisonment, each not to exceed 30 days. The maximum period of imprisonment shall not exceed 6 months. Before recommitting a person for an additional term of imprisonment, the court must hold a hearing to determine whether the person has the ability to purge himself or herself of the contempt. In addition, any finding of contempt by the court during the initial contempt hearing or any subsequent hearing must be by clear and convincing evidence.***

CURRENT LAW: Under current law, a person found to be in civil contempt by a court may be incarcerated indefinitely until the person complies with the orders of the court and purges himself or herself of the contempt. Civil contempt is permitted under the law to give the court the power to enforce orders of the court. The law requires that the court find that the person has the ability to comply, but that the person refuses to comply with the orders of the court. The person imprisoned is considered to have the ability to gain his or her release by following the orders of the court. Civil contempt differs from criminal contempt in several ways. Relevant to this bill, a person can be held in criminal contempt for a maximum of 30 days as punishment for violating an order of the court.

Current law only requires a finding by the greater weight of the evidence the facts that constitute civil contempt and must specify what action must be taken to purge the civil contempt.

BILL ANALYSIS:

Section 1 amends current law to also require the court to find that the person's non-compliance is willful before the court can hold a person in civil contempt. Current law only requires a finding of the following: 1) the order remains in force; 2) the purpose of the order may still be served by compliance; and 3) the person to whom the order is directed is able to comply with the order or is able to take measures that would enable the person to comply.

The term of imprisonment for a person found in civil contempt shall not exceed 30 days. However, if a person fails to purge himself or herself of the contempt within the term of imprisonment, the court may recommit the person. The recommitment may be for one or more successive terms of imprisonment, each not to exceed 30 days. The maximum term of imprisonment for the same act of disobedience or refusal to comply with a court order is 6 months, including both the initial term of imprisonment and any subsequent recommitments. The court, on its own motion, must hold a hearing before recommitting a person for civil contempt. The court must find by clear and convincing evidence that all of the elements required to find someone in contempt still exists before recommitting the person.

A person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience or refusal to comply with the court order.

Section 2 amends current law by requiring the court in civil contempt proceedings to find the facts by the higher standard of clear and convincing evidence rather than the standard of the greater weight of the evidence, as the current law requires.

Section 3 makes the bill effective when it becomes law and applies to all proceedings for civil contempt held on or after that date. The limit on the maximum term of imprisonment that a person can be required to serve for civil contempt would apply to all persons imprisoned on or after the effective date, as well as all persons currently imprisoned for civil contempt.

CHAPTER 5A.
Contempt.

ARTICLE 1.

Criminal Contempt.

§§5A-1 to 5A-10. Reserved for future codification purposes.

§ 5A-11. Criminal contempt.

(a) Except as provided in subsection (b), each of the following is criminal contempt:

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

(4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.

(5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

(6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.

(7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.

(8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.

(9) Willful communication with a juror in an improper attempt to influence his deliberations.

(9a) Willful refusal by a defendant to comply with a condition of probation.

(10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

The grounds for criminal contempt specified here are exclusive, regardless of any other grounds for criminal contempt which existed at common law.

(b) No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

(c) This section is subject to the provisions of G.S. 7A-276.1, Court orders prohibiting publication or broadcast of reports of open court proceedings or reports of public records banned. (1977, c. 711, s. 3; 1994, Ex. Sess., c. 19, s. 1.)

§ 5A-12. Punishment; circumstances for fine or imprisonment; reduction of punishment; other measures.

(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three, except that a person who commits a contempt described in G.S. 5A-11(8) is subject to censure, imprisonment not to exceed 6 months, fine not to exceed five hundred dollars ($500.00), or any combination of the three and a person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of G.S. 15A is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three.

(b) Except for contempt under G.S. 5A-11(5) or 5A-11(9), fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:

(1) The act or omission was willfully contemptuous; or

(2) The act or omission was preceded by a clear warning by the court that the conduct is improper.

(c) The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.

(d) A person held in criminal contempt under this Article may nevertheless, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt. If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in G.S. 5A-21(c).

(e) A person held in criminal contempt under G.S. 5A-11(9) may nevertheless, for the same conduct, be found guilty of a violation of G.S. 14-225.1, but he must be given credit for any imprisonment resulting from the contempt. (1977, c. 711, s. 3; 1985 (Reg. Sess., 1986), c. 843, s. 1; 1987 (Reg. Sess., 1988), c. 1040, s. 2.)

§5A-13. Direct and indirect criminal contempt; proceedings required.

(a) Criminal contempt is direct criminal contempt when the act:

(1) Is committed within the sight or hearing of a presiding judicial official; and

(2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and

(3) Is likely to interrupt or interfere with matters then before the court.

The presiding judicial official may punish summarily for direct criminal contempt according to the requirements of G.S. 5A-14 or may defer adjudication and sentencing as provided in G.S. 5A-15. If proceedings for direct criminal contempt are deferred, the judicial official must, immediately following the conduct, inform the person of his intention to institute contempt proceedings.

(b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure required by G.S. 5A-15. (1977, c. 711, s. 3.)

§5A-14. Summary proceedings for contempt.

(a) The presiding judicial official may summarily impose measures in response to direct criminal contempt when necessary to restore order or maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt.

(b) Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of

measures in response to contempt. The facts must be established beyond a reasonable doubt. (1977, c. 711, s. 3.)

§ 5A-15. Plenary proceedings for contempt.

(a) When a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when he may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If the criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.

(b) Proceedings under this section are before a district court judge unless a court superior to the district court issued the order, in which case the proceedings are before that court. Venue lies throughout the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judge is the trier of facts at the show cause hearing.

(e) The person charged with contempt may not be compelled to be a witness against himself in the hearing.

(f) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If the person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.

(g) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt. (1977, c. 711, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 44.)

§5A-16. Custody of person charged with criminal contempt.

(a) A judicial official may orally order that a person he is charging with direct criminal contempt be taken into custody and restrained to the extent necessary to assure his presence for summary proceedings or notice of plenary proceedings.

(b) If a judicial official who initiates plenary proceedings for contempt under G.S. 5A-15 finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person, pursuant to G.S. 15A-305. A person arrested under this subsection is entitled to release under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes. (1977, c. 711, s. 3.)

§5A-17. Appeals.

A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge. (1977, c. 711, s. 3.)

§§5A-18 to 5A-20. Reserved for future codification purposes.

ARTICLE 2.

Civil Contempt.

§5A-21. Civil contempt; imprisonment to compel compliance.

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the order; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as his civil contempt continues, unless the contempt is failure by a person not arrested for the crime to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General Statutes. In that case, he may not be imprisoned more than 90 days unless he is arrested on probable cause.

(c) A person who is found in civil contempt under this Article may, nevertheless, for the same conduct, be found in criminal contempt under Article 1 of this Chapter, but the total period of imprisonment arising from the conduct may not exceed the greater of:

(1) The period during which the contemnor may be imprisoned for civil contempt; or

(2) The period of imprisonment provided in G.S. 5A-12(a). (1977, c. 711, s. 3; 1979, 2nd Sess., c. 1080, s. 1.)

§ 5A-22. Release when civil contempt no longer continues.

(a) A person imprisoned for civil contempt must be released when his civil contempt no longer continues. The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt. Upon finding compliance with the specifications, the sheriff or other officer having custody may release the person without a further order from the court.

(b) On motion of the contemnor, the court must determine if he is subject to release and, on an affirmative determination, order his release. The motion must be directed to the judge who found civil contempt unless he is not available. Then the motion must be made to a judge of the same division in the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be. The contemnor may also seek his release under other procedures available under the law of this State. (1977, c. 711, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 45.)

§ 5A-23. Proceedings for civil contempt.

(a) Proceedings for civil contempt are either by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil contempt or by the notice of a judicial official that the alleged contemnor will be held in contempt unless he appears at a specified reasonable time and shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt.

(b) Except when the General Statutes specifically provide for the exercise of contempt power by the clerk of superior court, proceedings under this section are before a district court judge, unless a court superior to the district court issued the order in which case the proceedings are before that court. When the proceedings are before a superior court, venue is in the superior court district or set of districts as defined in G.S. 7A-41.1 of the court which issued the order. Otherwise, venue is in the county where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judicial official is the trier of facts at the show cause hearing.

(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged contemnor. If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself of the contempt.

(f) A person with an interest in enforcing the order may present the case for a finding of civil contempt for failure to comply with an order.

(g) A judge conducting a hearing to determine if a person is in civil contempt may at that hearing, upon making the required findings, find the person in criminal contempt for the same conduct, regardless of whether imprisonment for civil contempt is proper in the case. (1977, c. 711, s. 3; 1979, 2nd Sess., c. 1080, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1037, s. 46.)

§5A-24. Appeals.

A person found in civil contempt may appeal in the manner provided for appeals in civil actions. (1977, c. 711, s. 3.)

§5A-25. Proceedings as for contempt and civil contempt.

Whenever the laws of North Carolina call for proceedings as for contempt, the proceedings are those for civil contempt set out in this Article. (1977, c. 711, s. 3.)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/13/99

S. B. No. 170 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S170-PCSSE-001

Rep.)
) Soles
Sen.)

moves to amend the bill on page 2, line 45

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"element shall be established by clear, cogent and convincing evidence. If";

and on page 2, line 26 by rewriting the line to read:

"clear, cogent and convincing evidence that all of the elements of G.S. 5A-21(a),"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-13-99

S. B. No. S170-PCSSE-001 Amendment No. 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) RAND

1 moves to amend the bill on page 2, line 23

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORDS "UPON ITS OWN MOTION".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Thursday, April 15, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **426** Dissenters' Rights Amendments
Sequential Referral: None
Recommended Referral: None

S.B. **483** Amend Foreign Corp. Law
Sequential Referral: None
Recommended Referral: None

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

S.B. **170** Restructure Civil Contempt
Draft Number: PCS 4658
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, April 19, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **172** Possession of Blue Lights Illegal

Draft Number:	PCS 4679
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **176** Slayer/Forfeiture of Prop. Rights/AB

Draft Number:	PCS 8599
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **245** Letters of Credit UCC Rewrite/AB

Draft Number:	PCS 1708
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **246** Appeal or Transfer from Clerk

Draft Number:	PCS 4678
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **601** DOC Prisoners' Uniforms

Draft Number:	PCS 1707
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **654** Manufactured Home Law Restoration

Draft Number:	PCS 1705
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **774** Electronic Proxies for Nonprofits

Draft Number:	PCS 4680
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **775** Allow Electronic/Telephonic Proxies

Draft Number:	PCS 3781
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 8

Committee Clerk Comment: Will have Sen. Cooper sign

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

REVISED REPORT

Wednesday, April 21, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **769** Amend Larceny of Ginseng
Sequential Referral: None
Recommended Referral: None

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

S.B. **297** Various Limited Partnership Law Changes
Draft Number: PCS 7663
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **746** Structured Settlement Protection Act
Draft Number: PCS 1707
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Senator Cooper sign

SENATE BILL 170

CIVIL CONTEMPT RESEARCH

States with Imprisonment Caps

29 States Reviewed - 12 with caps, 17 with no caps

	Caps
California	12 months
Connecticut	60 days
North Dakota	6 months
Nevada	6 months
Oklahoma	6 months
Oregon	6 months
Rhode Island	6 months
South Carolina	12 months
South Dakota	12 months
Washington	12 months
Wisconsin	6 months
Wyoming	6 months

No Caps

Alabama
Arizona
Guam
Iowa
Louisiana
Michigan
Minnesota
Mississippi
New York
Ohio
Oklahoma
Pennsylvania
Tennessee
Utah
Vermont
Virginia
West Virginia

OTHER OPTIONS

Mandatory Periodic Judicial Reviews
Review by different judge
Different caps based on offense - 1) Failure to testify, 2) Domestic, 3) Other

North Carolina
ACADEMY of TRIAL LAWYERS
Protecting People's Rights

CHARLES L. CROMER,
LEGISLATIVE COUNSEL

19 March 1999

Senator Robert Carpenter
517 Legislative Office Building
Raleigh, NC 27601

Re: SB 170, Restructure Civil Contempt

Dear Senator Carpenter;

Thank you for the opportunity to review SB 170, entitled "An Act to Establish a Limit on the Time a Person Can Be Imprisoned for Civil Contempt and to Raise the Standard of Proof in Proceedings for Civil Contempt." After review, I have told you that we have no problem with the bill, its content, nor purpose and support your efforts to change some of the seemingly unfairness under the contempt statute now.

Having said that, we would like to be assured, through additional language to the bill, that the one year limit applies only to acts or omissions occurring prior to the finding of contempt. It is our understanding that contempt is a continuing offense and, even with the changes in the law proposed by you, should the person fail to act or act contrary to court order after being released from prison, they could be cited again and receive additional imprisonment.

If there is anything else that I can do to assist you, please let me know.

Cordially yours,

CHARLES L. CROMER

P.O. Box 10918 • Raleigh, NC 27605-0918 • Tel: (919) 832-1413 • Fax: (919) 832-6361 • 800-688-1413 • www.ncatl.org

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 746

Short Title: Structured Settlement Protection Act. (Public)

Sponsors: Senators Cooper; Ballance, Foxx, Kinnaird, Martin of Guilford, Miller, Rand, Reeves, and Soles.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"**§ 1-543.10. Title.**

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"**§ 1-543.11. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee

has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments, together with the discount rate used in determining such discounted present value;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in sub-subdivision e. of this paragraph;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both, to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was

in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties; and

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority; and

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed eighteen percent (18%).

"**§ 1-543.12. Definitions.**

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitely establishes that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service; or

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other

party that has continuing rights or obligations under such structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible

administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"**§ 1-543.13. Jurisdiction.**

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"**§ 1-543.14. Procedure for approval of transfers.**

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties, and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court

or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enfore this Article. In addition, the payee shall be entitled to reinstatement of all structured settlement payment rights lost as a result of violation of this Article by any transferee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, but nothing contained in this act shall imply that any transfer under a transfer agreement reached prior to such date is effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S746-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 746
THIS IS A DRAFT 7-APR-99 23:36:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in sub-subdivision e. of this paragraph;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both, to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in

effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties; and

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority; and

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed the annual percentage rate permitted under G.S. 25A-15(b)(4) calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan.

(8) The transfer of structured settlement payment rights is fair and reasonable.

"§ 1-543.12. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities

that definitely establishes that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service; or

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity

issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or

administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.12(8), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights

transferred as a result of a violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, but nothing contained in this act shall imply that any transfer under a transfer agreement reached prior to such date is effective.

VISITOR REGISTRATION SHEET

Name of Committee: J-I

Date: 4-13-99

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Deshondo Rascoe	Saint Augustine's College 1315 Oakwood Ave
Andre Mallory	Saint Augustine's College 1315 Oakwood Ave.
Julian Mason	OAH
[illegible]	WCSR
David Lowman	Hunton & Williams
John McArthur	General Electric Co.
John H. Loughridge, Jr.	Wachovia Bank, N.A.
Chris Leon	WCSR
Matt Osborne	AOC
[illegible]	DOC
Steve Woodson	NC Farm Bureau
Marian Dodd	League of Women Voters NC
[illegible]	WCSR
Floyd M. Lewis	General Statutes Commission
Caroline N. Brown	UNC School of Law
K. David	INTERN
Burton Craige	NCATL
Dirk Taylor	[illegible]
Roz Savitt	NC Child Care Coalition
[illegible]	[illegible]
J.F. Hartsell	NC Bar Association
[illegible]	AT&T

VISITOR REGISTRATION SHEET

Name of Committee J-I

Date 4-13-99

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Nancy Thompson	NCCBI
John McMillan	NAFIS
Bob Price	Indep Prod Worker
Phil Telfer	DOJ
DON HOBART	DOJ
Nat Mund	Conservation Council of NC
Rob Christensen	N&O
Gomanchann	EGHS
Bernard Allen	SOS
David Simmons	ZDA, PA
Webb Reid	NC Bar Association
Robert Glasser	Auto Dealers
HAROLD Webb	" "
GERRY HANCOCK	EGHS
Brad Hi	Beverage Assn
[illegible]	Investor Owned Power Council
Alan Nichols	Parker Poe Adams & Bernstein LLP
[illegible]	NCDOC
[illegible]	DOT

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 15, 1999

The Senate Judiciary I Committee met on April 15, 1999 at 9:30 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Hartsell to explain **Senate Bill 176 – AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.**

Senator Hartsell moved to adopt a Proposed Committee Substitute to Senate Bill 176 for discussion. The motion carried by a majority voice vote.

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 176 a favorable report. The motion carried by a majority voice vote.

Senator Clodfelter was recognized to explain **Senate Bill 426 – AN ACT TO LIMIT THE RIGHT OF SHAREHOLDERS OF SECURITIES DESIGNATED AS NATIONAL MARKET SYSTEM SECURITIES TO DISSENT FROM, OR OBTAIN PAYMENT AS A RESULT OF, CERTAIN CORPORATE ACTIONS AND TO MAKE OTHER CLARIFYING CHANGES TO THE LAW GOVERNING DISSENTERS' RIGHTS.**

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

Senator Clodfelter was recognized to explain **Senate Bill 483 – AN ACT TO REVISE THE LAW GOVERNING THE LIMITATIONS OF SUCCESSORS AND ASSIGNEES OF FOREIGN CORPORATIONS AND FOREIGN NONPROFIT CORPORATIONS TO FILE CAUSES OF ACTION OR PROCEEDINGS.**

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

Senator Clodfelter was recognized to explain **Senate Bill 774 – AN ACT TO AUTHORIZE THE APPOINTMENT OF MULTIPLE PROXIES OF MEMBERS OF NONPROFIT CORPORATIONS BY ELECTRONIC OR TELEPHONIC COMMUNICATION.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 774 for discussion. The motion carried by a majority voice vote.

Don Hobart and Bill Scoggin, with the N. C. Bar Association, were recognized to answer questions from the Committee.

Senator Soles moved to amend the Proposed Committee Substitute on Page 1, Line 19 and on Page 2, Line 2. The motion carried by a majority voice vote.

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 774 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Clodfelter was recognized to explain **Senate Bill 775 – AN ACT TO AUTHORIZE EXPRESSLY THE APPOINTMENT OF MULTIPLE PROXIES BY ELECTRONIC OR TELEPHONIC COMMUNICATION.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 775 for discussion. The motion carried by a majority voice vote.

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

Senator Gulley was recognized to explain **Senate Bill 654 – AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND LIENS RELATING TO MANUFACTURED HOUSING.**

Senator Gulley moved to adopt a Proposed Committee Substitute to Senate Bill 654 for discussion. The motion carried by a majority voice vote.

Bill Rowe – N. C. Justice Center – was recognized to answer questions from the Committee.

Frank Gray – Lobbyist for the Manufactured Housing Institute – was recognized to answer questions from the Committee and to comment on the bill.

Senator Soles moved to amend the Proposed Committee Substitute on Page 5, Line 11; Page 3, Line 43 and Page 4, Lines 1-30. The motion carried by a majority voice vote.

Senators Lucas and Ballantine moved to give the Proposed Committee Substitute to Senate Bill 654 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

SENATE JUDICIARY I COMMITTEE

AGENDA - APRIL 15, 1999

SB 176	Slayer/Forfeiture of Property Rights/AB	Hartsell
SB 426	Dissenters' Rights Amendments	Clodfelter
SB 483	Amend Foreign Corporation Law	Clodfelter
SB 654	Manufactured Home Law Restoration	Gulley
SB 774	Electronic Proxies for Nonprofits	Clodfelter
SB 775	Allow Electronic/Telephonic Proxies	Clodfelter

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 176*

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

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

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,~~ 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

S D

S176-PCSSE-001
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill 176
THIS IS A DRAFT 24-MAR-99 16:41:56
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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

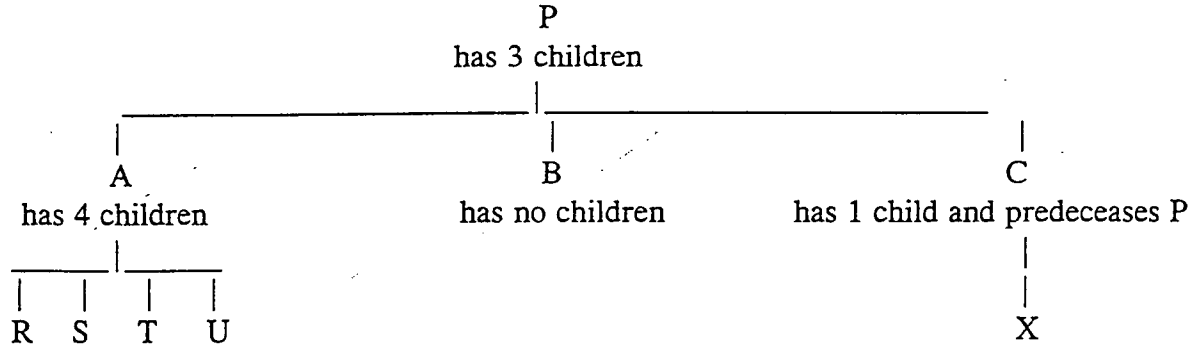
TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: March 24, 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).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 426

Short Title: Dissenters' Rights Amendments. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RIGHT OF SHAREHOLDERS OF SECURITIES DESIGNATED AS NATIONAL MARKET SYSTEM SECURITIES TO DISSENT FROM, OR OBTAIN PAYMENT AS A RESULT OF, CERTAIN CORPORATE ACTIONS AND TO MAKE OTHER CLARIFYING CHANGES TO THE LAW GOVERNING DISSENTERS' RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-13-02 reads as rewritten:

"**§ 55-13-02. Right to dissent.**

(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it (i) alters or abolishes a preferential right of the shares; (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares; (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes; (v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit corporation or cooperative organization; or

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this Article may not challenge the corporate action creating his entitlement, including without limitation a merger solely or partly in exchange for cash or other property, unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(c) Notwithstanding any other provision of this Article, there shall be no right ~~of dissent~~ of shareholders to dissent from, or obtain payment of the fair value of the shares in the event of, the corporate actions set forth in subdivisions (1), (2), or (3) of subsection (a) of this section ~~in favor of holders of shares of~~ if the affected shares are any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or (ii) held by at least 2,000 record ~~shareholders, unless in either case:~~ shareholders. This subsection does not apply in cases in which either:

(1) The articles of ~~incorporation~~ incorporation, bylaws, or a resolution of the board of directors of the corporation issuing the shares provide otherwise; or

(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

a. Cash;

b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or held ~~of record~~ by at least 2,000 record shareholders; or

c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision."

Section 2. This act becomes effective October 1, 1999, and applies to corporate actions to which shareholders may dissent occurring on or after that date.

SENATE BILL 426:
Dissenters' Rights Amendments

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 15, 1999	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: Senate Bill 426 would limit the right of corporate shareholders to dissent from certain actions of the corporation the shareholder owns stock in, if the securities are designated as a national market system security (stock traded on the NASDAQ).

CURRENT LAW: Current law limits shareholders rights to dissent when the security is listed on a **national securities exchange**.

BILL ANALYSIS: Senate Bill 426 would amend G.S. 55-13-02 of the Business Corporation Act which governs the right of a shareholder to dissent from corporate actions taken to merger with another corporation, be taken over by another company, to sell all or substantially all of the corporations assets, or to substantially change the rights of the shareholder in the corporation. The bill would provide that a shareholder cannot dissent under this statute if the corporation's stock is designated as a national market system security (NASD) under the same circumstances that a shareholder currently cannot dissent if the stock is listed on a national securities exchange (i.e. New York Stock Exchange). Presumably one of the reasons for this exception generally is that because the stock is publicly traded the shareholder could sell the stock for what would be considerd fair value and not be affected by the corporate action.

A national market system security is traded electornically and through telecommunications and not on a trading floor like a national securities exchange, and therefore is not considered to be within the exception currently in the law.

EFFECTIVE DATE: The bill would become effective October 1, 1999 and would apply to corporate actions to which shareholders could dissent occuring on or after that date.

S426-SMRU-001

NORTH CAROLINA
1899 – 1999
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Senate Bill 426 Dissenters' Rights Amendments

This legislation would include securities traded in the NASDAQ Stock Market (the top tier of the NASDAQ System) amongst those excluded from dissenters' rights. The NASDAQ Stock Market, having grown and having tightened its listing and maintenance standards in the past few years, provides sufficient liquidity to shareholders such that they do not need the dissenters' rights remedy under state law in a merger.

Right of dissent and appraisal (G.S. 55-13-02). Upon the recommendation of the Commission of Business Laws and the Economy, the Business Corporation Act ("BCA") was amended in 1997 to provide that the shareholders of a publicly held corporation will not have a right of dissent and appraisal upon a merger, share exchange or sale of assets. A publicly held corporation was defined as one whose shares are listed on a national securities exchange (e.g., New York Stock Exchange or American Stock Exchange) or held by at least 2,000 record shareholders. North Carolina is now one of 28 states that have such an exemption, but the great majority of those states (21, including Delaware, South Carolina, Tennessee and Virginia) include in the exemption companies whose shares are traded on the NASDAQ - National Market System. North Carolina is one of only seven states that does not extend the exemption to NASDAQ companies. It is proposed that G.S. 55-13-02(c) be amended to add the NASDAQ exemption.

Three other amendments of G.S. 55-13-02 are proposed as merely technical amendments. The first would correct an oversight that occurred when G.S. 55-11-04 was amended in 1997 to permit a short form reverse triangular merger with a 90% owned subsidiary. (Example: Corporation A wants to acquire Corporation B. A succeeds in buying 95% of the shares of B and needs to acquire the remaining shares by a cash merger. A organizes Corporation S as a wholly-owned subsidiary, which then merges into B in a short-form merger with B as the surviving corporation.) The amendment would add the words "whose shares are not affected" after "parent corporation" in the second line of G.S. 55-13-02(a)(1) to preserve the right of dissent and appraisal for the minority shareholders of the surviving corporation in a reverse triangular merger. The second technical amendment would clarify subsection (c) by explicitly stating that the exemption therein applies only to a merger, share exchange or sale of assets; and the third technical amendment would make subsection (c)(1) consistent with subsection (a)(5) in permitting a right of dissent to be conferred by a bylaw provision or a resolution of the board of directors.

The North Carolina Bar Association and the Governor's Commission on Business Laws and the Economy recommend passage of this important legislation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 483

Short Title: Amend Foreign Corp. Law. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 24, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING THE LIMITATIONS OF SUCCESSORS AND ASSIGNEES OF FOREIGN CORPORATIONS AND FOREIGN NONPROFIT CORPORATIONS TO FILE CAUSES OF ACTION OR PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-15-02(a) reads as rewritten:

"(a) No foreign corporation transacting business in this State without permission obtained through a certificate of authority under this Chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless ~~such~~ the foreign corporation ~~shall have~~ has obtained a certificate of authority prior to ~~trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the transaction of business by such corporation in this State until:~~

~~(1) A certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired substantially all of its assets, or~~

~~(2) Substantially all of its assets have been acquired by a domestic corporation or one or more individuals.~~ trial.

An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial."

Section 2. G.S. 55A-15-02(a) reads as rewritten:

"(a) No foreign corporation conducting affairs in this State without permission obtained through a certificate of authority under this Chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless ~~each~~ the foreign corporation ~~shall have~~ has obtained a certificate of authority prior to ~~trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the conduct of affairs by such corporation in this State until:~~

~~(1) A certificate of authority shall have been obtained by the corporation or by a foreign entity which has acquired substantially all of its assets and is entitled to obtain a certificate of authority; or~~

~~(2) Substantially all of its assets have been acquired by a foreign entity which is not entitled to obtain a certificate of authority by a domestic corporation or by one or more individuals.~~ trial.

An issue arising under this subsection ~~shall~~ must be raised by motion and determined by the trial judge prior to trial."

Section 3. This act becomes effective October 1, 1999, and applies to causes of action or proceedings filed on or after that date.

SENATE BILL 483:
Amend Foreign Corporation Act

BILL ANALYSIS

Committee:	Senate Judicary I	**Introduced by:**	Senator Clodfelter
Date:	April 15, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 483 would amend the law to only require that a foreign corporation (one incorporated in another state) be registered as a foreign corporation in this State in order to file suit, and eliminates the requirement that a foreign corporation that was a predecessor in interest of the matter that is the subject of the action also be registered as a foreign corporation.***

CURRENT LAW: Current statutory law, as interpreted by the Court of Appeals, requires that both the foreign corporation that has acquired rights by assignment or as a successor in interest from another foreign corporation, and the foreign corporation from whom the rights were acquired, obtain a certificate of authority to do business in the State before the successor foreign corporation is entitled to the benefits of bringing an action in the State's courts.

BILL ANALYSIS: Senate Bill 483 amends both the Business Corporation Act (Chapter 55) and the Nonprofit Corporation Act (Chapter 55A) to eliminate the requirement that the foreign corporation from whom another foreign corporation has acquired an interest that is the basis of a lawsuit must also have had the authority to do business in the State in order for the successor foreign corporation to be entitle to bring an action in the State. The apparent concept of the current law is to encourage all foreign corporations doing business in the State to registered in the State, and punishes the failure to register by making agreements made in the State by non-registered foreign corporations not enforceable in State courts. This bill would only require the foreign corporation trying to assert the claim in State court to have to be registered, regardless of whether the predecessor foreign corporation was registered.

BACKGROUND: The North Carolina Court of Appeals in LeasecommCorp. v. Renaissance Auto Care, Inc., 112 NCApp 119 (1996), held:

> "*...a foreign corporation or its successor or assignee may not maintain any action in North Carolina ...until the foreign corporation obtains a certificate of authority to do business here.*".

EFFECTIVE DATE: The bill becomes effective October 1, 1999 and applies to causes of action and proceedings filed on or after that date.

S483-SMRU-001

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
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http://www.barlinc.org

Senate Bill 483 Amend Foreign Corporation Law

This proposal amends the Business Corporation Act to allow foreign corporations to bring an action in a North Carolina court on a contract under which it received its right from a corporation not qualified to do business in North Carolina. This legislation corrects an inequity in current law which precludes an otherwise qualified foreign corporation that takes an assignment of rights from an unqualified foreign corporation (a corporation which has not obtained a certificate of authority from the Secretary of State) from accessing the courts of this state to enforce the rights granted.

A foreign corporation must first obtain a certificate of authority from the Secretary of State before transacting business in North Carolina. If it fails to do so, it cannot bring suit in the North Carolina courts unless and until it complies with that requirement. That is standard law in most state and is codified in the first clause of the first sentence of G.S. §55-15-02(a).

The second clause of that first sentence goes further and provides that no assignee of such a foreign corporation can bring suit in North Carolina on any matter arising out of the business done by that foreign corporation unless the foreign corporation obtains a certificate of authority or the assignee has bought substantially all of the foreign corporation's assets. This position was judicially acknowledged in *LeasecommCorp. v. Renaissance Auto Care, Inc.*, 122 N.C. App. 119, 468 S.E.2d 562 (1996).

The purpose of disqualifying assignees of foreign corporations from enforcing their rights was arguably to encourage foreign corporation to comply with the statute. However, The Secretary of State has other far more effective sanctions to compel compliance, and the broadness of the disqualification (as shown by the *Leasecomm* case) is a serious unintended flaw. SB 483 corrects this flaw, which affects a large number of assignments of contracts (such as loan pools, equipment leases, etc.).

The North Carolina Bar Association and the Governor's Commission on Business Laws and the Economy recommend passage of this important legislation.

William G. Scoggin, Director of Governmental Affairs
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NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Thursday, April 15, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **426** Dissenters' Rights Amendments
Sequential Referral: None
Recommended Referral: None

S.B. **483** Amend Foreign Corp. Law
Sequential Referral: None
Recommended Referral: None

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

S.B. **170** Restructure Civil Contempt
Draft Number: PCS 4658
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 774

Short Title: Electronic Proxies for Nonprofits. (Public)

Sponsors: Senator Clodfelter; and Dannelly.

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT OF MULTIPLE PROXIES OF MEMBERS OF NONPROFIT CORPORATIONS BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-7-24(a) reads as rewritten:

"(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint ~~a proxy~~ one or more proxies to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A ~~telegram, telex, facsimile, or other form of wire or wireless communication appearing to have been transmitted by a member, or a photocopy~~ photocopy, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section. In addition, subject to any reasonable requirements imposed by the nonprofit corporation, a member may appoint one or more proxies by a telegram, cablegram, electronic mail message, or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member."

Section 2. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 774
Proposed Senate Committee Substitute
S774-PSCLT-001
ATTENTION: LINE NUMBERS MAY CHANGE UPON ADOPTION.

Short Title: Electronic Proxies for Nonprofits. (Public)

Sponsors:

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT OF MULTIPLE PROXIES OF MEMBERS OF NONPROFIT CORPORATIONS BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-7-24(a) reads as rewritten:

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electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 774:
Electronic Proxies for Nonprofits

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Clodfelter
Date:	April 15, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: This bill is a recommendation of the North Carolina Bar Association and amends the North Carolina Nonprofit Corporation Act. The bill expressly allows a member to appoint one or more proxies to vote for the member or act on behalf of the member by signing an appointment form. A photocopy, facsimile transmission, or equivalent reproduction of a writing is considered a valid appointment form. The bill also allows a member to appoint one or more proxies by a telegram, cablegram, electronic mail message, or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member. The act becomes effective October 1, 1999.

CURRENT LAW: Currently, the law does not expressly provide that a member may appoint more than one proxy to vote or otherwise act on behalf of the member by signing an appointment form. G.S. 55A-7-24(a) provides in part, "A member may appoint a proxy to vote or otherwise act for him by signing an appointment for, either personally or by his attorney-in-fact." However, the law seems to imply that a shareholder may appoint more than one proxy because G.S. 55A-7-24(a) allows the member to appoint "one or more proxies" on an appointment form. (See statute on reverse side.). In addition, current law does not allow members to appoint proxies by a telegram, cablegram, electronic mail, or other form of electronic, wire, or wireless communication.

§ 55A-7-24. Proxies.

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A telegram, telex, facsimile, or other form of wire or wireless communication appearing to have been transmitted by a member, or a photocopy or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

(1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1.)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-15-99

S. B. No. 774-PSCLT-001 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) CLODFELTER
Sen.)

moves to amend the bill on page 1, line 19

( ) WHICH CHANGES THE TITLE

by INSERTING BETWEEN THE WORDS "PROXIES" AND "BY" THE SUBDIVISION "(i)"; AND

ON PAGE 2, LINE 2,

BY DELETING THE WORD "MEMBER." AND SUBSTITUTING THE WORDS "MEMBER; OR (ii) BY ANY KIND OF ELECTRONIC OR TELEPHONIC TRANSMISSION, EVEN IF NOT ACCOMPANIED BY WRITTEN COMMUNICATION, UNDER CIRCUMSTANCES OR TOGETHER WITH INFORMATION FROM WHICH THE NONPROFIT CORPORATION CAN REASONABLY ASSUME THAT THE APPOINTMENT WAS MADE OR AUTHORIZED BY THE MEMBER."

SIGNED Daniel G. Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 775

Short Title: Allow Electronic/Telephonic Proxies. (Public)

Sponsors: Senators Clodfelter; and Dannelly.

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EXPRESSLY THE APPOINTMENT OF MULTIPLE PROXIES BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-7-22(b) reads as rewritten:

"(b) A shareholder may appoint ~~a proxy~~ one or more proxies to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A ~~telegram, telex, facsimile or other form of wire or wireless communication appearing to have been transmitted by a shareholder, or a photocopy~~ photocopy, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section. In addition, subject to any reasonable requirements imposed by the corporation, a shareholder may appoint one or more proxies (i) by a telegram, cablegram, electronic mail message, or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder, or (ii) in the case of a public corporation, by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the corporation can reasonably assume that the appointment was made or authorized by the shareholder."

Section 2. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 775
Proposed Senate Committee Substitute: S775-PCSLT-001
ATTENTION: LINE NUMBERS MAY CHANGE UPON ADOPTION.

Short Title: Allow Electronic/Telephonic Proxies. (Public)

Sponsors:

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EXPRESSLY THE APPOINTMENT OF MULTIPLE PROXIES BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-7-22(b) reads as rewritten:

"(b) A shareholder may appoint ~~a proxy~~ one or more proxies to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A ~~telegram, telex, facsimile or other form of wire or wireless communication appearing to have been transmitted by a shareholder, or a photocopy~~ photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permited by the corporation, a shareholder may appoint one or more proxies (i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder, or (ii) in the case of a public corporation, by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with

information from which the corporation can reasonably assume that the appointment was made or authorized by the shareholder."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 775:
Electronic Proxies for Nonprofits

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Clodfelter
Date:	April 15, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: This bill is a recommendation of the North Carolina Bar Association and amends the North Carolina Business Corporation Act. The bill expressly allows a shareholder to appoint one or more proxies to vote the shareholder's shares or act on behalf of the shareholder by signing an appointment form. A photocopy, facsimile transmission, or equivalent reproduction of a writing is considered a valid appointment form. The bill also allows a shareholder to appoint one or more proxies by a telegram, cablegram, electronic mail message, or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder. In the case of a public corporation, a shareholder may appoint one or more proxies by any kind of electronic or telephonic transmission, even if not accompanied by written communication, when circumstances together with information exists so that the corporation can reasonable assume that the appointment was made or authorized by the shareholder. The act becomes effective October 1, 1999.

CURRENT LAW: Currently, the law does not expressly provide that a shareholder may appoint more than one proxy to vote or otherwise act on behalf of the shareholder by signing an appointment form. G.S. 55-7-22(b) provides in part, "A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact." However, the law seems to imply that a shareholder may appoint more than one proxy because G.S. 55-7-22(b) allows the shareholder to appoint "one or more proxies" on an appointment form. (See statute on reverse side.). In addition, current law does not allow shareholders to appoint proxies by a telegram, cablegram, electronic mail, or other form of electronic, wire, or wireless communication.

§ 55-7-22. Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A telegram, telex, facsimile or other form of wire or wireless communication appearing to have been transmitted by a shareholder, or a photocopy or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(1) A pledgee;

(2) A person who purchased or agreed to purchase the shares;

(3) A creditor of the corporation who extended it credit under terms requiring the appointment;

(4) An employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under G.S. 55-7-31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) shall be revocable when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to G.S. 55-7-24 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

NORTH CAROLINA
1899 - 1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

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Senate Bill 774- Electronic Proxies for Non-Profits
Senate Bill 775 - Allow Electronic/Telephonic Proxies

The current Business Corporation Act contains proxy voting language based on a model statute from the 1950s. Since that time, many states (particularly Delaware, where many companies are incorporated) have expanded the proxy provisions to expressly permit newer forms of electronic and telephonic voting. Under the current language of the statute, it is unclear whether voting by email or over the internet can be used by North Carolina corporations. Senate Bill 775 would expressly permit this for public corporations and Senate Bill 774 would do likewise for non-profit corporations. Traditional means for proxy votes are retained (cablegrams, telegrams) along with facsimile transmission. Language is added which allows appointment of proxies by electronic mail message or other from of electronic, wire or wireless communication that provides a written statement appearing to have been sent by the shareholder. Use of these new means of proxy voting are voluntary by the corporation, allowing a phasing-in of usage concurrent with technology the corporation has available. These changes are very much desired by many North Carolina corporations.

The Corporate Counsel and Business Law Sections of the North Carolina Bar Association as well as the Governor's Commission on Business Laws and the Economy endorse and **recommend passage** of these two bills as tools to bring North Carolina business up-to-date.

27409 April 15, 1999

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 654

Short Title: Manufactured Home Law Restoration. (Public)

Sponsors: Senator Gulley.

Referred to: Commerce.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND LIENS RELATING TO MANUFACTURED HOUSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42.25.9(b) reads as rewritten:

"(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 44A-2(e), 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2 the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress."

Section 2. G.S. 42-25.9(g) reads as rewritten:

"(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises. Except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e) shall apply to the disposition of a manufactured home by a landlord after being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the

landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located."

Section 3. G.S. 42-36.2(b) reads as rewritten:

"(b) Sheriff May Store Property. -- When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. ~~Within~~ Except for the disposition of manufactured homes as provided in G.S. 42-25.9(g) and G.S. 44A-2(e), within 10 days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. After the expiration of the 10-day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within 10 days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale."

Section 4. G.S. 42-36.2(d) reads as rewritten:

"(d) Notice. -- The notice required by subsection (a) ~~shall~~ shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within 10 days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

(1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;

(2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or

(3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

Section 5. G.S. 44A-2(e) reads as rewritten:

"(e) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) or of a nonresidential demised premises has a lien on all furniture, furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises if (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars ($100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien created by this subsection shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S654-PCSSE-001
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill 654
THIS IS A DRAFT 14-APR-99 18:44:13
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Manufactured Home Law Restoration. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND LIENS RELATING TO MANUFACTURED HOUSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-25.9(b) reads as rewritten:

"(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 44A-2(e2), 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2 the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress."

Section 2. G.S. 42-25.9(g) reads as rewritten:

"(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the ~~premises.~~ premises, except that in the case of the lease of a

space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home by a landlord after being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located."

Section 3. G.S. 42-36.2(b) reads as rewritten:

"(b) Sheriff May Store Property. -- When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove

the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. ~~Within~~ Except for the disposition of manufactured homes as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2), within 10 days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. After the expiration of the 10-day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within 10 days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale."

Section 4. G.S. 42-36.2(d) reads as rewritten:

"(d) Notice. -- The notice required by subsection (a) ~~shall~~ shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within 10 days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

(1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;

(2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or

(3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

Section 5. G.S. 44A-2(e) reads as rewritten:

"(e) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) or of a nonresidential demised premises has a lien on all furniture, furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises if (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars ($100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien created by this subsection shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien."

Section 6. G.S. 44A-2 is amended by adding a new subsection to read:

"(e2) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) has a lien on all furniture, furnishings, and other personal property including the manufactured home titled in the name of the tenant if (i) the manufactured home remains on the demised premises 21 days after the lessor is placed in lawful possession by writ of possession and (ii) the lessor has a lawful claim for damages against the tenant. If the lessor has received a judgment for possession of the premises which has been executed, then all property remaining on the premises may be removed and placed in storage. Prior to the expiration of the 21 day period, the landlord shall release possession of the personal property and manufactured home to the

tenant during regular business hours or at a time mutually agreed upon. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of the sale. The lien created by this subsection shall be enforced by public sale under G.S. 44A-4(e). The landlord may begin the advertisement for sale process immediately upon execution of the writ of possession by the sheriff, but may not conduct the sale until the lien until the lien has attached. This lien shall not have any priority over any security interest in the property that is perfected at the time the lessor acquires this lien. The lessor shall not have a lien under this subsection if there is an agreement between the lessor or the lessor's agent and the tenant that the lessor shall not have a lien."

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

SENATE BILL 654:
Manufactured Home Law Restoration

BILL ANALYSIS

Committee: Senate Judiciary 1
Date: April 8, 1999
Version: S654-PCSSE-001

Introduced by: Senator Gulley
Summary by: Jo B. McCants
Committee Co-Counsel

SUMMARY: The proposed committee substitute to Senate Bill 654 provides that a landlord who leases manufactured home lots may not throw away, dispose of, or sell a manufactured home that remains on the landlord's lot after the landlord has been placed in lawful possession by the execution of a writ of possession. However, the landlord has a lien on the manufactured home and the personal property abandoned by the tenant. The landlord may sell the manufactured home pursuant to G.S. 44A-2(e2).

CURRENT LAW: G.S. 42-25.9(g) provides that 10 days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises. Since manufactured homes and mobile homes are considered personal property, the current law would allow a landlord to throw away, dispose of, or sell a manufactured home or mobile home in the same manner as any other abandoned personal property.

BILL ANALYSIS:

Section 1. Section 1 amends current law to provide that a landlord is not liable to a tenant for removing and placing into storage the tenant's manufactured home that remains on the landlord's premises after the tenant has vacated the premises for 21 or more days of the paid rental period or the landlord has received a judgment for possession.

Section 2. Section 2 amends current law to exempt a manufactured home from the forms of personal property that a landlord may throw away, dispose of, or sell, if the home remains on the landlord's premises 10 days after receiving lawful possession by execution of a writ of possession.

Section 3. Current law requires a landlord to release a tenant's personal property within 10 days of a landlord being placed in lawful possession by execution of a writ of possession and upon the tenant's request; the landlord must release the property to the tenant. This section provides an exception for the release of the property in cases where the disposition of a manufactured home is at issue, and provides that G.S. 44A-2(e2) applies in such situations.

Section 4. Current law requires before the sheriff can remove a tenant's personal property pursuant to a writ of possession of real property or an order, the sheriff must give the tenant notice of the approximate time that the writ will be executed. The notice provides that failure to request possession of any of the property on the premises within 10 days of the execution may result in the property being thrown away, disposed of, or sold. This section amends current law by providing that the sheriff does not have to give notice that the manufactured home may be thrown away, disposed of or sold in cases involving the lease of a space for a manufactured home.

Section 5. Section 5 amends current law to give a landlord who leases spaces for manufactured homes a lien on the manufactured home and all of the personal property abandoned by the tenant if (1) the tenant

has vacated the premises for 21 or more days after the paid rental period has expired, and (2) the lessor has a lawful claim for damages against the tenant.

Section 6. Section 6 creates a new subsection to G.S. 44A-2 that makes it clear that a landlord who leases spaces for manufactured homes acquires a lien on the actual manufactured home 21 days after being placed in lawful possession by execution of a writ of possession and the landlord has a lawful claim against the tenant. The lessor may enforce the lien by public sale after the lien has attached. The lien does not have priority over any security interest in the property perfected at the time the lessor acquires the lien. In addition, the lessor and tenant may enter into an agreement that the lessor will not obtain a lien on the manufactured home.

Section 7. Effective Date: The act becomes effective when it becomes law.

BACKGROUND:

In 1995, the North Carolina Apartment Association, Association of Realtors and the North Carolina Justice and Community Development Center came together and requested legislation that would make it easier for landlords to dispose of personal property left in a rental unit after a final judgment of possession had been obtained. The law was subsequently changed to provide that a tenant has 10 days after execution of the judgment for possession to claim the tenant's personal property. After the 10-day period of time, the landlord had the right to dispose of the personal property. This change in the law produced an unintended effect because manufactured homes are considered personal property. Therefore, the owner of a manufactured home could lose his or her home if the owner did not move the manufactured home from the rented space within 10 days after the judgment for possession became final. Senate Bill 654 seeks to restore the law to pre-1996 to restore the law regarding the disposition of manufactured homes located on rented lots after the owners of the home have been evicted from the landlord's lot.

§ 44A-2. Persons entitled to lien on personal property.

(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or

(2) The contract price; or

(3) One hundred dollars ($100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests.

(b) Any person engaged in the business of operating a hotel, motel, or boardinghouse has a lien upon all baggage, vehicles and other personal property brought upon his premises by a guest or boarder who is an owner thereof to the extent of reasonable charges for the room, accommodations and other items or services furnished at the request of the guest or boarder. This lien shall not have priority over any security interest in the property which is perfected at the time the guest or boarder brings the property to said hotel, motel or boardinghouse.

(c) Any person engaged in the business of boarding animals has a lien on the animals boarded for reasonable charges for such boarding which are contracted for with an owner or legal possessor of the animal. This lien shall have priority over perfected and unperfected security interests.

(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5.

(e) Any lessor of nonresidential demised premises has a lien on all furniture, furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises if (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars ($100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien created by this subsection shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien.

(e1) This Article shall not apply to liens created by storage of personal property at a self-service storage facility.

(f) Any person who improves any textile goods in the ordinary course of his business pursuant to an express or implied contract with the owner or legal possessor of such goods shall have a lien upon all goods of such owner or possessor in his possession for improvement. The amount of such lien shall be for the entire unpaid contracted charges owed such person for improvement of said goods including any amount owed for improvement of goods, the possession of which may have been relinquished, and such lien shall have priority over perfected and unperfected security interests. "Goods" as used herein includes any textile goods, yarns or products of natural or man-made fibers or combination thereof. "Improve" as used herein shall be construed to include processing, fabricating or treating by throwing, spinning, knitting, dyeing, finishing, fabricating or otherwise.

(g) Any person who fabricates, casts, or otherwise makes a mold or who uses a mold to manufacture, assemble, or otherwise make a product pursuant to an express or implied contract with the owner of such mold shall have a lien upon the mold. For a lien to arise under this subsection, there must exist written evidence that the parties understood that a lien could be applied against the mold, with the evidence being in the form either of a written contract or a separate written statement provided by the potential holder of the lien under this subsection to the owner of the mold prior to the fabrication or use of the mold. The

written contract or separate written statement must describe generally the amount of the potential lien as set forth in this subsection. The amount of the lien under this subsection shall equal the total of (i) any unpaid contracted charges due from the owner of the mold for making the mold, plus (ii) any unpaid contracted charges for all products made with the mold. The lien under this subsection shall not have priority over any security interest in the mold which is perfected at the time the person acquires this lien. As used in this subsection, the word "mold" shall include a mold, die, form, or pattern.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/15/99

S. B. No. S654 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S654-PCSSE-001

Rep.)
Sen.) SOLES

moves to amend the bill on page 5, line 11

( ) WHICH CHANGES THE TITLE

by rewriting the ~~[illegible]~~ line to read: "the sheriff, but may not conduct the sale until";

and on page 4, lines ~~1 through 2~~ by rewriting those lines to read:

~~(c) Any lessor of nonresidential demised premises has~~".

and on page 3, line 43 through page 4, lines 1 through 30, by deleting those lines and renumbering the sections accordingly.

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, April 19, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **172** Possession of Blue Lights Illegal

Draft Number:	PCS 4679
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **176** Slayer/Forfeiture of Prop. Rights/AB

Draft Number:	PCS 8599
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **245** Letters of Credit UCC Rewrite/AB

Draft Number:	PCS 1708
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **246** Appeal or Transfer from Clerk

Draft Number:	PCS 4678
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **601** DOC Prisoners' Uniforms

Draft Number:	PCS 1707
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **654** Manufactured Home Law Restoration

Draft Number:	PCS 1705
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **774** Electronic Proxies for Nonprofits

Draft Number:	PCS 4680
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **775** Allow Electronic/Telephonic Proxies

Draft Number:	PCS 3781
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 8

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

(1)

Judiciary 1 — 4-15-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sheila Pope	Sec. of State
P. Bry Hall	General Statutes Commission
Guilderoy Baker	Visitor - Rocky Mount, N.C.
Hope Worten	Visitor - Rocky Mount, NC
Mildred Dudley	" Rocky Mount, NC
Yvonne Fountain	" Rocky Mount, NC
Peggy Brown	" Rocky Mount, N.C.
Ruth Little	Visitor Shrewsbury N.C.
Emma S Brake	visitor Rocky Mt. N.C.
Lona Daughtridge	Visitor - Rocky mount, N.C
Floyd M. Lewis	General Statutes Commission
Bill Rowe	NC Justice Center
Anne Winn	NC Justice Center
Frank Gray	N.C Min. Housing Institute
Chris Sinclair	" " " "

VISITOR REGISTRATION SHEET

(2)

Name of Committee J-1 Date 4-15-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kristin David	INTERN
Mel Bason	Capital Group
Melissa Lovell	DOJ
Bernard Allen	SOS
Paul Wilms	NCMBA
Jim Ahler	NCACPA
SAM JOHNSON	ATTY
Kevin Howell	Governor's Office
Bryan Beatty	DOJ
David Fennell	ANC
Patricia Glancy	ARENC/ACLU
Fran Preston	NCRMP

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 20, 1999

The Senate Judiciary I Committee met on April 20, 1999 at 9:30 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Clodfelter to explain **Senate Bill 297 – AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 297 for discussion. The motion carried by a majority voice vote.

Bill Scoggin and Tom Cook, with the N. C. Bar Association, were recognized to speak on the bill.

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 297 a favorable report. The motion carried by a majority voice vote.

Senator Foxx was recognized to explain **Senate Bill 769 – AN ACT TO MODIFY THE ESSENTIAL ELEMENTS OF THE FELONY OFFENSE OF LARCENY OF GINSENG.**

Senator Carpenter moved to give Senate Bill 769 a favorable report. The motion carried by a majority voice vote.

Senator Cochrane was recognized to explain **Senate Bill 34 – AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.**

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 34 for discussion. motion

Walker Reagan, Committee Counsel, was recognized to explain the Proposed Committee Substitute.

Eric Tolbert, Director of Emergency Management Services for the state, and Dan Summers, Director of Emergency Management Services for New Hanover County, were recognized to answer questions from the Committee.

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

Senator Soles was recognized to explain **Senate Bill 789 – AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.**

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 789 for discussion. motion

Alan Hirsch, with the Attorney General's Office, was recognized to answer questions from the Committee.

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 789 a favorable report. The motion carried by a majority voice vote.

Senator Ballance was recognized to explain **Senate Bill 370 – AN ACT CLARIFYING WHEN WITNESS STATEMENTS OBTAINED PURSUANT TO THE ENFORCEMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT MAY BE RELEASED.**

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 370 for discussion. The motion carried by a majority voice vote.

Angela Waldorf, General Counsel with the Department of Labor, was recognized to speak on the bill.

Senator Soles moved to amend the Proposed Committee Substitute on Page 2, Line 29. The motion carried by a majority voice vote. (Amendment attached.)

Senator Gulley moved to give the Proposed Committee Substitute to Senate Bill 370 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Wellons was recognized to explain **Senate Bill 761 – AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGMENT OF CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.**

Steven Reinhard, with the Real Property Section of the N. C. Bar Association, was recognized to speak on the bill.

Senator Wellons moved to amend the Proposed Committee Substitute on Page 5, Lines 27 and 28; Page 6, Line 9; Page 6, Lines 19 and 20; Page 6, Line 21

and Page 6, Line 27. The motion carried by a majority voice vote. (Amendment attached.)

Senator Gulley moved to give the Proposed Committee Substitute to Senate Bill 761 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Soles, as Acting Chairman, recognized Senator Cooper to explain **Senate Bill 888 – AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.**

John Waters, with the Attorney General's office, was recognized to speak on the bill.

Due to time constraints, Senate Bill 761 will be brought back to the Committee for discussion at the next meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, II Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: **Tuesday, April 20, 1999**
TIME: **9:30 - 11:00 a.m.**
ROOM: **1027**

The following bills or resolutions will be considered:

SB 34	Emergency Shelter/Health Facility Immunity	Cochrane
SB 297	Limited Partnership Law Changes	Clodfelter
SB 303	Inpatient Commit/Conditional Release	Rand
SB 370	OSHA Witness Statements	Ballance
SB 637	Exp. Assault-School Personnel	Rand
SB 707	Update Corporate Conveyancing	Hoyle
SB 761	Update Corporate Conveyancing	Wellons
SB 769	Amend Larceny of Gensing	Foxx
SB 789	Charitable Nonprofit Notice	Soles
SB 837	Torrens Registration System	Allran
SB 885	State Auditor Records Access	Cooper
SB 888	Drug Law Amendments	Cooper

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 20, 1999

SB 34	Emergency Shelter/Health Facility Immunity	Cochrane
SB 297	Limited Partnership Law Changes	Clodfelter
SB 303	Inpatient Commit/Conditional Release	Rand
SB 370	OSHA Witness Statements	Ballance
SB 637	Exp. Assault-School Personnel	Rand
SB 707	Update Corporate Conveyancing	Hoyle
SB 761	Update Corporate Conveyancing	Wellons
SB 769	Amend Larceny of Gensing	Foxx
SB 789	Charitable Nonprofit Notice	Soles
SB 837	Torrens Registration System	Allran
SB 885	State Auditor Records Access	Cooper
SB 888	Drug Law Amendments	Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 297

Short Title: Various Limited Partnership Law Changes. (Public)

Sponsors: Senators Clodfelter; Cooper, Hartsell, Kerr, Miller, and Odom.

Referred to: Judiciary I.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"**§ 1-79. Domestic ~~corporations.~~ corporations, limited partnerships, and limited liability companies.**

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, or limited liability company is as follows:

(1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, or limited liability company is located, or

(2) Where the ~~corporation~~ corporation, limited partnership, or limited liability company maintains a place of ~~business.~~ business, or

(3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~ corporation, limited partnership, or limited liability company is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

(1) An entity formed under the laws of this State, or

(2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

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

(1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

~~(1)~~ (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

(3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.

(6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(9) 'Partner' means a limited or general partner.

(10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~ agreement of the partners as to the affairs of a limited ~~partnership and~~ partnership, the conduct of its ~~business.~~ business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any

amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 3. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement:~~ A written record that contains:

a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and

d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 4. G.S. 59-107 reads as rewritten:

"**§ 59-107. Nature of business.**

A limited partnership may be formed for and carry on any lawful ~~business that a partnership without limited partners may carry on.~~ business."

Section 5. G.S. 59-205 reads as rewritten:

"**§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.**

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation.~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order an

appropriate person to prepare, and the Secretary of State to ~~record~~ record, an appropriate ~~certificate of amendment or cancellation.~~ certificate."

Section 6. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this ~~section~~ subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 7. G.S. 59-301 reads as rewritten:

"**§ 59-301. Admission of ~~additional~~ limited partners.**

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the ~~filing~~ formation of a ~~limited partnership's original certificate of~~ limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance ~~with~~ with, the partnership ~~agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners;~~ agreement; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 8. G.S. 59-302 reads as rewritten:

"**§ 59-302. Voting.**

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 9. G.S. 59-303 reads as rewritten:

"**§ 59-303. Liability to third parties.**

~~(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general~~

~~partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

~~(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

~~(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~

~~(2) Consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(3) Acting as surety for the limited partnership;~~

~~(4) Proposing, approving or disapproving an amendment to the partnership agreement;~~

~~(5) Proposing or voting on one or more of the following matters:~~

~~a. The dissolution and winding up of the limited partnership;~~

~~b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~

~~c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~d. A change in the nature of the business; or~~

~~e. The addition, removal or substitution of general partners;~~

~~(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~

~~(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~

~~(8) Requesting or attending a meeting of partners.~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

~~(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 10. G.S. 59-304 reads as rewritten:

"§ 59-304. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving

distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise ~~(i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.~~ in the case in which:

(1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and

(2) The third party transacted business with the enterprise before either:

a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or

b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 11. G.S. 59-305 reads as rewritten:

"**§ 59-305. Information.**

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 12. G.S. 59-402(4) reads as rewritten:

"(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment

of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;".

Section 13. G.S. 59-402(5) reads as rewritten:

"(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;".

Section 14. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership,~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 15. G.S. 59-503 reads as rewritten:

"§ 59-503. Sharing income, gain, loss, deduction or credit.

~~Allocation of the income,~~ Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 16. G.S. 59-504 reads as rewritten:

"§ 59-504. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 17. G.S. 59-602 reads as rewritten:

"**§ 59-602. Withdrawal of general partner.**

After filing of the original certificate of limited ~~partnership~~ partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and~~ any damages for breach of the partnership ~~agreement.~~ agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 18. G.S. 59-603 reads as rewritten:

"**§ 59-603. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership ~~agreement.~~ agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited ~~partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.~~ partnership."

Section 19. G.S. 59-604 reads as rewritten:

"**§ 59-604. Distribution upon withdrawal.**

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~ withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 20. G.S. 59-606 reads as rewritten:

"**§ 59-606. Right to distribution.**

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 21. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him.~~ the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 22. G.S. 59-702 reads as rewritten:

"**§ 59-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a ~~limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general~~ partner ceases to be a ~~general~~ partner and to have the power to exercise any rights and powers of a partner upon assignment of all ~~his~~ of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner."

Section 23. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~ the assignee became a limited partner and ~~which~~ (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 24. G.S. 59-801 reads as rewritten:

"**§ 59-801. Nonjudicial dissolution.**

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;

(2) Written consent of all partners;

(3) An event of withdrawal of a general partner ~~unless at~~ unless:

a. At the time there is at least one other general ~~partner and the written provisions of the partnership agreement permit~~ partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership ~~to be carried on~~ shall be continued by the remaining general ~~partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within~~ partners; or

b. Within 90 days after the withdrawal, all remaining ~~partners~~ partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or ~~desired; or~~ desired, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) 90 days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article. Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 25. G.S. 59-903 reads as rewritten:

"**§ 59-903. Issuance of registration.**

~~(a)~~ If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in the office of the Secretary of State the application;

(3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 26. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 27. G.S. 59-1002 reads as rewritten:

"**§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1)~~ (i) must have been a partner at the time of the transaction ~~of which he complains~~ that is the subject of the complaint or ~~(2) his~~ (ii) the plaintiff's status as a partner ~~had~~ must have devolved upon ~~him~~ the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 28. This act becomes effective October 1, 1999, and applies to suits filed on or after that date. Section 18 of this act applies to (i) any limited partnership formed before October 1, 1999, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 297
Proposed Committee Substitute S297-PCS7663-RU

Short Title: Ltd. Ptnersp./Prof. Liability Changes. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"**§ 1-79. Domestic ~~corporations.~~ corporations, limited partnerships, and limited liability companies.**

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, or limited liability company is as follows:

(1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, or limited liability company is located, or

(2) Where the ~~corporation~~ corporation, limited partnership, or limited liability company maintains a place of ~~business.~~ business, or

(3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~

corporation, limited partnership, or limited liability company is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

(1) An entity formed under the laws of this State, or

(2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 55B-9(b) reads as rewritten:

"(b) Liability. -- A shareholder, a director, or an officer of a professional corporation is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment or otherwise, for the ~~debts and obligations of~~ debts, obligations, and liabilities of, or chargeable to, the professional corporation ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative.~~ malfeasance committed by another shareholder, director, or officer or by a representative of the professional corporation; provided, however, nothing in this Chapter shall affect the liability of a shareholder, director, or officer of a professional corporation for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. This subsection does not affect the joint and several liability of a shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Section 3. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to

Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, ~~or~~ the standards of professional conduct applicable to the rendering of the ~~services.~~ services, or any ~~This Chapter does not relieve individuals of responsibilities,~~ responsibilities, obligations, or ~~the imposition of~~ sanctions imposed under applicable licensing ~~statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company.~~ statutes. A member or manager of a professional limited liability company is not individually ~~liable for debts and obligations of~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed ~~in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative.~~ by another member, manager, employee, agent or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

Section 4. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

~~In this Article:~~ As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

(1) 'Bankrupt' ~~includes~~ means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.

(2) 'Business' ~~includes~~ means every trade, occupation, or profession.

(3) 'Conveyance' ~~includes~~ means every assignment, lease, mortgage, or encumbrance.

(4) 'Court' ~~includes~~ means every court and judge having jurisdiction in the case.

(4a) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.

(5) 'Person' ~~includes~~ means individuals, partnerships, corporations, limited liability companies, and other associations.

(6) 'Real property' ~~includes~~ means land and any interest or estate in land.

(7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

Section 5. G. S. 59-45 reads as rewritten:

"**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.**

(a) Except as provided by subsection (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner, and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for ~~debts and obligations of~~ the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance~~ malfeasance committed by another partner or by an employee, agent, or other representative of the partnership; provided, however, nothing in this Chapter shall affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. ~~committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved~~

~~in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative.~~

~~(c) Subsection (b) of this section does not affect any of the following:~~

~~(1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.~~

~~(2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.~~

~~(3) The liability of partnership assets for partnership debts and obligations.~~

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability."

Section 6. Chapter 59 of the General Statutes is amended by adding a new Article 3B to read as follows and to include current G.S. 59-84.2 and G.S. 59-84.3 as the first and second sections in Article 3B:

"ARTICLE 3B.

"Registered Limited Liability Partnerships.

Section 7. G.S. 59-84.2 reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**"

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application ~~stating~~ stating:

(1) ~~the~~ The name of the ~~partnership,~~ partnership.

(2) ~~the~~ The street address of its principal ~~office,~~ office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process.

(4) The county in which the registered office is located.

(5) ~~the number of partners, and a~~ A brief statement of the business in which the partnership engages.

(6) A deferred effective date, if any.

~~A registration as a registered limited liability partnership must be renewed annually.~~

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership

agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(b) An application for registration as a registered limited liability partnership must be executed ~~by a majority in interest of the partners or~~ by one or more ~~partners authorized by a majority in interest of the~~ partners.

(c) An application for registration as a registered limited liability partnership ~~or for renewal of a registration~~ must be accompanied by a fee of one hundred twenty-five dollars ~~($100.00).~~ ($125.00).

(d) The Secretary of State shall register ~~or renew the registration of~~ a partnership that submits a completed application with the required fee.

(e) A registration is effective ~~for one year after~~ on the later of the date the registration is ~~filed,~~ filed or the date specified in the application for registration, unless it is voluntarily withdrawn ~~before then~~ by filing with the Secretary of State a written withdrawal notice executed by ~~a majority in interest of the partners or by~~ one or more ~~partners authorized by a majority in interest of the partners.~~ of the partners, or is revoked pursuant to G.S. 59-84.4(f).

(f) The Secretary of State may provide forms for applications for ~~registration or renewal of a~~ registration.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal."

Section 8. G. S. 59-84.3 reads as rewritten:

"**§ 59-84.3. Name of registered limited liability partnerships.**

A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation ~~"L.L.P."~~ 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name."

Section 9. Article 3B of Chapter 59 as created by Section 6 of this act is amended by adding a new section to read:

"**§ 59-84.4. Annual report for Secretary of State.**

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets forth all of the following:

(1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at

that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The street address and telephone number of its principal office.

(4) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. The annual report must be accompanied by a fee of two hundred dollars ($200.00).

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

(1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;

(2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;

(3) The registered limited liability partnership or foreign limited liability partnership has been without a registered agent or registered office in this State for 60 days or more; or

(4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited

liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the revocation. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 10. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Foreign Limited Liability Partnerships.

"§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership.

"§ 59-91. Statement of foreign registration.

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The street address of the partnership's principal office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and

registered office for service of process, and the county in which the registered office is located;

(4) A brief statement of the business in which the partnership is engaged.

(5) A deferred effective date, if any.

(b) The registered agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this State or another person authorized to do business in this State.

(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).

(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.

(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).

(f) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.

(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

"§ 59-92. Effect of failure to register.

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) If a foreign limited liability partnership transacts business in the State without a registration as a limited liability partnership, the Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this State.

(e) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed

by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

"§ 59-93. Activities not constituting transacting business.

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;

(10) Selling through independent contractors; and

(11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

"**§ 59-94. Action by Attorney General.**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article."

Section 11. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

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

(1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

~~(1)~~ (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

(3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.

(6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(9) 'Partner' means a limited or general partner.

(10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~ agreement of the partners as to the affairs of a limited ~~partnership and~~ partnership, the conduct of its ~~business.~~ business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement,

whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 12. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement:~~ A written record that contains:

a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and

d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 13. G.S. 59-107 reads as rewritten:

"**§ 59-107. Nature of business.**

A limited partnership may be formed for and carry on any lawful ~~business that a partnership without limited partners may carry on.~~ business."

Section 14. G.S. 59-205 reads as rewritten:

"**§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.**

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation.~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so

designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to ~~record~~ record, an appropriate ~~certificate of amendment or cancellation.~~ certificate."

Section 15. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this ~~section~~ subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 16. G.S. 59-301 reads as rewritten:

"**§ 59-301. Admission of ~~additional~~ limited partners.**

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the ~~filing~~ formation of a ~~limited partnership's original certificate of~~ limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance ~~with~~ with, the partnership ~~agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners;~~ agreement; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 17. G.S. 59-302 reads as rewritten:

"**§ 59-302. Voting.**

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 18. G.S. 59-303 reads as rewritten:

"**§ 59-303. Liability to third parties.**

~~(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general~~

~~partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

~~(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

~~(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~

~~(2) Consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(3) Acting as surety for the limited partnership;~~

~~(4) Proposing, approving or disapproving an amendment to the partnership agreement;~~

~~(5) Proposing or voting on one or more of the following matters:~~

~~a. The dissolution and winding up of the limited partnership;~~

~~b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~

~~c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~d. A change in the nature of the business; or~~

~~e. The addition, removal or substitution of general partners;~~

~~(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~

~~(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~

~~(8) Requesting or attending a meeting of partners.~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

~~(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 19. G.S. 59-304 reads as rewritten:

"§ 59-304. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving

distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise ~~(i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.~~ in the case in which:

(1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and

(2) The third party transacted business with the enterprise before either:

a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or

b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 20. G.S. 59-305 reads as rewritten:

"**§ 59-305. Information.**

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 21. G.S. 59-402(4) reads as rewritten:

"(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment

of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;".

Section 22. G.S. 59-402(5) reads as rewritten:

"(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;".

Section 23. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership,~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 24. G.S. 59-503 reads as rewritten:

"§ 59-503. Sharing income, gain, loss, deduction or credit.

~~Allocation of the income,~~ Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 25. G.S. 59-504 reads as rewritten:

"§ 59-504. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 26. G.S. 59-602 reads as rewritten:

"§ 59-602. Withdrawal of general partner.

After filing of the original certificate of limited ~~partnership~~ partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and~~ any damages for breach of the partnership ~~agreement.~~ agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 27. G.S. 59-603 reads as rewritten:

"§ 59-603. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership ~~agreement.~~ agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited ~~partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.~~ partnership."

Section 28. G.S. 59-604 reads as rewritten:

"§ 59-604. Distribution upon withdrawal.

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~ withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 29. G.S. 59-606 reads as rewritten:

"**§ 59-606. Right to distribution.**

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 30. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him.~~ the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 31. G.S. 59-702 reads as rewritten:

"**§ 59-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a ~~limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general~~ partner ceases to be a ~~general~~ partner and to have the power to exercise any rights and powers of a partner upon assignment of all ~~his~~ of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner."

Section 32. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~ the assignee became a limited partner and ~~which~~ (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 33. G.S. 59-801 reads as rewritten:

"**§ 59-801. Nonjudicial dissolution.**

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;

(2) Written consent of all partners;

(3) An event of withdrawal of a general partner ~~unless at~~ unless:

a. At the time there is at least one other general ~~partner and the written provisions of the partnership agreement permit~~ partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership ~~to be carried on~~ shall be continued by the remaining general ~~partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within~~ partners; or

b. Within 90 days after the withdrawal, all remaining ~~partners~~ partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or ~~desired; or~~ desired, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) 90 days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article, Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 34. G.S. 59-903 reads as rewritten:

"**§ 59-903. Issuance of registration.**

~~(a)~~ If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in the office of the Secretary of State the application;

(3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 35. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 36. G.S. 59-1002 reads as rewritten:

"**§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1)~~ (i) must have been a partner at the time of the transaction ~~of which he complains~~ that is the subject of the complaint or ~~(2) his~~ (ii) the plaintiff's status as a partner ~~had~~ must have devolved upon ~~him~~ the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 37. This act becomes effective October 1, 1999, and applies to suits filed on or after that date, except Sections 2, 3, and 5 apply to liabilities arising on or after the effective date. Section 9 applies to registered limited liability partnerships and foreign limited liability partnerships whose fiscal years end on or after the effective date. Section 10 applies to foreign limited liability partnerships transacting business in this State on or after the effective date. Section 27 of this act applies to (i) any limited partnership formed before October 1, 1999, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after October 1, 1999.

SENATE BILL 297: Limited Partnership/Professional Liability Law Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 20, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S297-CSRU-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 297 will amend the law related to limited partnerships and will clarify the limit of liability of professionals in limited liability companies, registered limited liability partnerships, and professional corporations. The bill also provides for registration of foreign limited liability partnerships and annual reports by registered limited liability partnerships and foreign limited liability partnerships.***

BILL ANALYSIS: Section 1 of the bill provides that the legal residence of a limited partnership and a limited liability company are determined the same as for a corporation.

Sections 2 and 3 amends the Professional Corporation Act (Chapter 55B) and the Limited Liability Company Act (Chapter 57C), respectively, to clarify that a shareholder, director, or officer of a professional corporation, or a member of a limited liability company, is not individually liable for the professional malpractice of another person in the professional organization but would be personally liable for their own malpractice.

Section 4 adds the definition of a "foreign limited liability partnership" to the Uniform Partnership Act (Chapter 59).

Section 5 also amends the Uniform Partnership Act to clarify the liability of partners in a registered limited liability partnership (RLLP) generally, and to clarify that a partner in a RLLP is not individually liable for the professional malpractice of another partner in the RLLP but would be personally liable for their own malpractice.

Sections 6, 7, 8 create a new article for registered limited liability partnerships and makes other clarifying changes in this law for the creation, amendment, and designation of a RLLP.

Section 9 requires RLLP's and foreign limited liability partnerships to file annual reports with the Secretary of State in a fashion similar to the annual reports required of corporations, nonprofits, and limited liability companies.

Section 10 provides for the registration of a foreign limited liability partnership in a fashion similar to the registration of a foreign corporation, foreign nonprofit corporation, a foreign limited liability company, and a foreign limited partnership.

Sections 11 through 36 amend the Limited Partnership Act in Article 5 of Chapter 59 and makes numerous clarifying changes regarding limited partnerships. Section 18 deletes the liability of limited partners to third parties under certain circumstances and provides that the limited partner is not liable even if the limited partner participates in the management of the limited partnership. Section 27 allows for a

limited partnership to amend the provisions for allowing a limited partner to withdraw and provides that in a limited partnership where no provisions are made for a limited partner to withdraw, the limited partner may not withdraw until the time for the dissolution and winding up of the limited partnership business.

EFFECTIVE DATE: The bill becomes effective October 1, 1999 and generally applies prospectively to actions by covered organizations on or after that date.

S297-SMRU-001

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
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Modernizing the Limited Partnership Act

Senate Bill 297 - Various Limited Partnership Law Changes

The North Carolina Bar Association, through its Tax and Business Law Sections, reviews the laws governing business associations on an ongoing basis. After much study, Senate Bill 297 was developed to revise the North Carolina Revised Uniform Limited Partnership Act (the "*NC Act*") to make it consistent with the uniform act upon which it is based and with the limited partnership acts of other states.

The Revised Uniform Limited Partnership Act ("*Uniform Act*") was originally adopted by the National Conference of Commissioners on Uniform State Laws in 1976, as a modernization of the Uniform Limited Partnership Act promulgated in 1916. Additional clarifications and improvements were made to the Uniform Act in 1985. The current NC Act was enacted in 1986, but generally was in the form of the 1976 version of the Uniform Act, without the 1985 amendments. Although some amendments have been made to the NC Act since 1986, many of the 1985 revisions to the Uniform Act have not yet incorporated into the NC Act. Some portions date back to the original 1916 version and are, as a practical matter, obsolete.

This legislation incorporates many of the Uniform Act's 1985 amendments into the NC Act. In addition, a few other changes in the bill incorporate provisions from other states' laws that are viewed as being more in accord with modern business practices and expectations. These changes are particularly necessary in light of the enactment of limited liability company statutes by all 50 states and the promulgation by the United States Department of Treasury of the so-called "check-the-box" regulations regarding tax status of unincorporated entities.

We urge your support for these changes which modernize and update our business laws.

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

25815 revised April 19, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 769

Short Title: Amend Larceny of Ginseng. (Public)

Sponsors: Senators Foxx; Allran, Carpenter, Carrington, Cochrane, East, Forrester, Garwood, Hartsell, Horton, Odom, Purcell, Rucho, Shaw of Guilford, Webster, and Weinstein.

Referred to: Judiciary I.

April 6, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE ESSENTIAL ELEMENTS OF THE FELONY OFFENSE OF LARCENY OF GINSENG.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-79 reads as rewritten:

"**§ 14-79. Larceny of ginseng.**

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

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

SENATE BILL 769:
Larceny of Ginseng

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Foxx
Date:	April 20, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: This bill amends current law to provide that anyone who steals ginseng growing on the land of another person shall be punished as a Class H felon. The act becomes effective on December 1, 1999, and applies to offenses committed on or after that date.

CURRENT LAW: Currently, a person who steals ginseng growing on the land of another is only punished if the ginseng is growing in beds that are enclosed by a lawful fence. The defendant is punished as a Class H felon.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 34*

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

Sponsors: Senators Cochrane, Carpenter, Dannelly, Martin of Pitt, Purcell; and Perdue.

Referred to: Judiciary I.

February 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

(e) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

(e) As used in this section:

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S34-CSRU-001.1
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 34
THIS IS A DRAFT 19-APR-99 15:54:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND TO PROVIDE IMMUNITY FROM LIABILITY, FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.

The General Assembly of North Carolina enacts:

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

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

(a) In addition to the applicable limits on liability under G.S. 166A-15, any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency, is

not liable for any personal injury, wrongful death, property damage, or other loss caused by the facility's or home care agency's acts or omissions in the provision of shelter or services in accordance with this subsection.

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

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

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

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

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

(d) The Division of Facility Services may temporarily waive during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(e) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

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

(a) In addition to the applicable limits on liability under G.S. 166A-15, an adult care home licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency, is not liable for any personal injury, wrongful death, property damage, or other loss caused by the adult care home's acts or omissions in the provision of shelter or services in accordance with this subsection.

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

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

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

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

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

(d) The Division of Facility Services may temporarily waive during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article

1 1 of Chapter 166A of the General Statutes. The Division may also
2 waive rules under this subsection during a declared disaster or
3 emergency upon the request of an emergency management agency and
4 may rescind the waiver if, after investigation, the Division
5 determines the waiver poses an unreasonable risk to the health,
6 safety, or welfare of any of the persons occupying the adult care
7 home. The emergency management agency requesting temporary
8 shelter or temporary services under this section shall notify the
9 Division within 72 hours of the time the preapproved waivers are
10 deemed by the emergency management agency to apply.
11 (e) As used in this section, 'emergency management agency' is
12 as defined in G.S. 166A-4(2)."
13 Section 3. This act becomes effective July 1, 1999, and
14 applies to shelter or services provided on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 789

Short Title: Charitable Nonprofit Notice. (Public)

Sponsors: Senator Soles.

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-12-02(g) reads as rewritten:

"(g) A charitable or religious corporation shall give written notice to the Attorney General ~~20~~ 30 days before it sells, leases, exchanges, or otherwise disposes of all, or ~~substantially all, of~~ a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. The notice to the Attorney General required by this section shall include all the information that the Attorney General determines is required to allow a complete review of the transaction."

Section 2. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S789-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 789
THIS IS A DRAFT 19-APR-99 16:19:00
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Charitable Nonprofit Notice. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-12-02(g) reads as rewritten:

"(g) A charitable or religious corporation shall give written notice to the Attorney General ~~20~~ 30 days before it sells, leases, exchanges, or otherwise disposes of all, or ~~substantially all, of~~ a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. Upon written notice by the Attorney General prior to the expiration of the initial notice period to a charitable or religious corporation giving notice under this subsection, the Attorney General may require an additional 30-day period to review the proposed transaction during which time the transaction may not be finalized. The notice to the Attorney General required by this section shall include all the

information that the Attorney General determines is required to allow a complete review of the transaction."

Section 2. This act becomes effective October 1, 1999 and applies to notices given on or after that date.

SENATE BILL 789:
Charitable Nonprofit Notice

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Soles
Date:	April 20, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S789-CSRU-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 789 would amend the law requiring a charitable or religious nonprofit corporation to give notice to the Attorney General prior to a substantial sale of the corporation's assets to expand the notice period to 30 days, to reduce the applicable size of the transaction to a majority of the corporation's assets, to allow the Attorney General an additional 30 days to review the transaction, and to require the corporation to furnish the Attorney General all information necessary to conduct the review.***

CURRENT LAW: Current law requires a charitable or religious nonprofit to give the Attorney General 20 days notice in advance of a sale, lease, exchange or other disposition of all or substantially all, of the corporation's assets if the transaction is other than in the normal course of activities of the corporation, unless the Attorney General waives the right to notice in writing.

BILL ANALYSIS: The Proposed Committee Substitute would make several changes to this notice statute.

1. It would expand the number of days prior notice of the sale must be given from 20 to 30 days.
2. It would lower the threshold for which the notice requirements apply from "substantially all" to "a majority " of the assets of the corporation.
3. It would allow the Attorney General to extend for an additional 30 days the time the Attorney General has to review the transaction before the transaction can be finalized.
4. It would require the corporation to provide all information required by the Attorney General to allow for a complete review of the transaction.

BACKGROUND: Assets of charitable and religious nonprofits are considered to be the property of the public and the Attorney General has a duty to protect the public's interest in these corporations by the enforcement of the charitable trust laws. In the situations covered by this bill, it is the role of the Attorney General to see that the disposal of the corporation's assets result in the public getting full value for the assets. This bill is intended to provide for the Attorney General to have adequate time and information to conduct a complete review on behalf of the public. If the Attorney General determined that the terms of the transaction were not in the best interest of the public, the Attorney General can go to court and ask the court to enjoin the sale.

EFFECTIVE DATE: The bill becomes effective October 1, 1999 applies to notices given on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 370

Short Title: OSHA Witness Statements. (Public)

Sponsors: Senators Ballance; Dannelly, Gulley, Kinnaird, Lucas, Martin of Guilford, Miller, Shaw of Cumberland, and Weinstein.

Referred to: Judiciary I.

March 15, 1999

A BILL TO BE ENTITLED

AN ACT CLARIFYING WHEN WITNESS STATEMENTS OBTAINED PURSUANT TO THE ENFORCEMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT MAY BE RELEASED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-136(e1) reads as rewritten:

"(e1) ~~The~~ In order to encourage witnesses and complainants without fear of reprisal to speak freely to duly authorized agents of the Commissioner carrying out their duties pursuant to this Article, the names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released or ordered to be released to any employer or third ~~party.~~ party by the Review Board or any court, either during the pendency or after final determination of proceedings under this Article, unless their testimony or statements are needed by the Commissioner to enforce the provisions of this Article. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the ~~use of~~ Commissioner from using the name or statement of a witness or complainant ~~in enforcement proceedings or hearings held pursuant to this Article.~~ at hearings to enforce the provisions of this Article. Upon the Commissioner's determination that a witness will be called to testify at a hearing on the merits, the Review Board or the

court shall, on motion of the respondent, order the Commission to produce, no later than five days prior to that hearing, any statement of the witness in the possession of the Commissioner that relates to the subject matter of the testimony of the witness. The Commissioner may permit the use of names and statements of witnesses and complainants and information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S370-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 370
THIS IS A DRAFT 19-APR-99 19:00:14
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: OSHA Witness Statements. (Public)

Sponsors:

Referred to:

March 15, 1999

A BILL TO BE ENTITLED

AN ACT CLARIFYING WHEN WITNESS STATEMENTS OBTAINED PURSUANT TO THE ENFORCEMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT MAY BE RELEASED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-136(e) reads as rewritten:

"(e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section. Files and other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are ~~pending.~~ pending, except that, subject to the provisions of subsection (e1) of this section, an employer cited under the provisions of this Article is entitled to receive a copy of the official inspection report which is the basis for citations received by the employer following the issuance of citations."

Section 2. G.S. 95-136(e1) reads as rewritten:

"(e1) Upon the written request of and at the expense of the requesting party, official inspection reports of inspections

conducted pursuant to this Article shall be available for release in accordance with the provisions contained in this subsection and subsection (e) of this section. The names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released to any employer or third ~~party.~~ party and shall be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements that are in the handwriting of the witness or complainant shall, upon the request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the use of the name or statement of a witness or complainant by the Commissioner in enforcement proceedings or hearings held pursuant to this Article. The Commissioner shall make available to the employer ten days prior to a scheduled enforcement hearing unredacted copies of the witness statements the Commissioner intends to use at the enforcement hearing or the statements of witnesses the Commissioner intends to call to testify, provided a written request for the statement is received by the Commissioner no later than twelve days prior to the enforcement hearing. If the request for an unredacted copy of the witness statement or statements is received less than twelve before a hearing, the statement or statements shall be made available as soon as practicable. The Commissioner may permit the use of names and statements of witnesses and complainants and information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties."

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

SENATE BILL 370:
OSHA Witness Statements.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Ballance
Date:	April 20, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S370-CSRU-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 370 would amend the OSHA law to permit employers charged with OSHA violation to obtain copies of inspection reports and witness statements in various forms at various times in the enforcement hearing process.***

CURRENT LAW: Current law closes all OSHA investigative records and reports while the investigations and proceedings are pending. Current law provides that the names of witnesses and witnesses' statements shall not be released to any employer or third party, without a signed release by the person whose statement is sought.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 370 would permit an employer who has been cited for OSHA violations to get a copy of the official inspection report with the names and identities of the witnesses redacted. The employer is also entitled to transcriptions of handwritten witness statements with the witness's identity redacted, but upon request immediately prior to an enforcement hearing the Commissioner of Labor shall furnish unredacted witness statements to the employer.

Section 1 of the bill authorizes the Commissioner to give to a cited employer a copy of the official inspection report that serves as the basis for the OSHA violation citation.

Section 2 provides that upon the request and at the expense of the requesting party, the Commissioner shall furnish copies of the official inspection reports with the names and identities of the witnesses redacted. Upon request and payment, a person may obtain transcriptions of handwritten witness statements with the witness's identity redacted. This section also requires the Commissioner to furnish to the employer copies of unredacted witness statements 10 days prior to an enforcement hearing for all witnesses the Commissioner plans to use in the hearing if requested at least 12 days prior to the hearing. Requests made within less than 12 days prior to the hearing shall be made available as soon as practicable.

EFFECTIVE DATE: The bill is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-20-99

S. B. No. 370 CSRN 001 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) SOLES

1 moves to amend the bill on page 2, line 29

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "TWELVE" AND "BEFORE"

4 THE WORD "DAYS".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 761

Short Title: Update Corporate Conveyancing. (Public)

Sponsors: Senator Wellons.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGMENT OF CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-41.01 reads as rewritten:

"**§ 47-41.01. Corporate conveyances.**

(a) The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law.

(b) If the deed or other instrument is executed by ~~the corporation's chairman, president, chief executive officer, a vice president or an assistant vice president, treasurer, or chief financial officer signing the name of such corporation by him as such officer,~~ an official of the corporation, signing the name of the corporation by him in his official capacity, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e) is sealed with its common or corporate seal, and is attested by another person who is ~~its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier,~~ an attesting official of the corporation, the following form of acknowledgment is sufficient:

.....

(State and county, or other description of place where acknowledgment is taken)

I,....., ...,
(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)
certify that ..... personally came before
~~(Name of secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Name of attesting official)
me this day and acknowledged that he (or she) is .....
~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Title of attesting official)

of....., a corporation, and that by authority duly
(Name of corporation)
given and as the act of the corporation, the foregoing instrument was signed in its name by its.....,
~~(Chairman, president, chief executive officer, vice president, assistant vice president, treasurer, or chief financial officer)~~ (Title of official)

sealed with its corporate seal, and attested by himself (or herself) as its.....
~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Title of attesting official)

Witness my hand and official seal, this the..... day of
.....,
(Month)
.....
(Year)

.....
(Signature of officer taking acknowledgment)
(Official seal, if officer taking acknowledgment has one)
My commission expires.....
(Date of expiration of commission as notary public)

(c) If the deed or other instrument is executed by an official of the corporation, signing the name of the corporation in his official capacity, or any other agent

authorized by resolution pursuant to G.S. 47-18.3(e) the following form of acknowledgment is sufficient:

(State and county, or other description of place where acknowledgment is taken)

I,..... .....
(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)

certify that ..... personally came before me this day and acknowledged that he (or she) is .....
(Name of official) (Title of official)

of....., a corporation, and that he/she, as

....., being authorized to do so, executed the foregoing on behalf of the corporation.
(Title of official)

Witness my hand and official seal, this the..... day of .....
(Month)

.....
(Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires.....
(Date of expiration of commission as notary public)

(d) For purposes of this section:

(1) The words "a corporation" following the blank for the name of the corporation may be omitted when the name of the corporation ends with the word "Corporation" or "Incorporated."

(2) The words "My commission expires" and the date of expiration of the notary public's commission may be omitted except when a notary public is the officer taking the acknowledgment. The fact that these words and this date may be located in a position on the form different from the position indicated in this subsection does not by itself invalidate the form.

(3) The ~~words~~ phrase "and official seal" and the seal itself may be omitted when the officer taking the acknowledgment has no seal or when such officer is the clerk, assistant clerk, or deputy clerk of the superior court of the county in which the deed or other instrument acknowledged is to be registered.

(4) The official of the corporation is the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e).

(5) The attesting official of the corporation is the corporation's secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or in the case of a bank, its secretary, assistant secretary, cashier or assistant cashier.

(6) The phrase "sealed with its corporate seal" may be omitted if the seal of the corporation has not been affixed to the instrument being acknowledged."

Section 2. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.5. Elimination of seal.**

The seal of the signatory shall not be necessary to effect a valid conveyance of an interest in real property; provided, that this section shall not affect the requirement for affixing a seal of the officer taking an acknowledgment of the instrument."

Section 3. G.S. 1-47 reads as rewritten:

"**§ 1-47. Ten years.**

Within ten years an action --

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

(1a) Upon a judgment rendered by a justice of the peace, from its date.

(2) Upon a sealed instrument or an instrument of conveyance of an interest in real property, against the principal thereto. Provided, however, that if action on ~~a sealed~~ an instrument is filed, the defendant or defendants in such action may file a counterclaim arising out of the same transaction or transactions as are the subject of plaintiff's claim, although a shorter statute of limitations would otherwise apply to defendant's counterclaim. Such counterclaim may be filed against such parties as provided in G.S. 1A-1, Rules of Civil Procedure.

(3) For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale

became absolute, or within ten years after the last payment on the same.

(4) For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.

(5) Repealed by Session Laws 1959, c. 879, s. 2.

(6) a. Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting, within 10 years after the last act or omission giving rise to the cause of action.

b. For purposes of this subdivision, "surveying and platting" means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.

c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

Section 4. G.S. 47-18.3 reads as rewritten:

"**§ 47-18.3. Execution of corporate instruments; authority and proof.**

(a) Notwithstanding anything to the contrary in the bylaws or articles of incorporation, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a domestic or foreign corporation by its chairman, president, chief executive officer, a ~~vice-president or an assistant vice-president, treasurer,~~ vice-president, or chief financial officer, ~~and attested or countersigned by another person who is its secretary or an assistant secretary, (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier),~~ such an instrument shall be as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a corporation, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that the instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(c) Nothing in this section shall be deemed to exclude the power of any corporate representatives to bind the corporation pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve corporate officers from liability to the corporation or from any other liability that they may have incurred from any violation of their actual authority.

(e) ~~The Home Owners Loan Corporation or any~~ Any ~~corporation, the majority of whose stock is owned by the United States government,~~ corporation may convey lands or other property which is transferable by deed which is duly executed by either an officer, manager, or agent of said ~~corporation, sealed with the common seal~~ corporation and has attached thereto a signed and attested ~~resolution, under seal,~~ resolution of the board of directors of said corporation authorizing the said officer, manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation to be attached to a deed or separately recorded in the case of a deed duly executed by the corporation's chairman, president, chief executive officer, a vice-president, treasurer, or chief financial officer. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

Section 5. Sections 1 and 4 of this act become effective October 1, 1999. The remaining sections of this act become effective when they become law and apply to instruments registered prior to or after that date, except that they shall not apply to litigation pending on that date or to any instrument directly or indirectly involved in litigation pending on that date.

SENATE BILL 761:
Update Corporate Conveyancing.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Wellons
Date:	April 20, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 761 would amend the laws governing the execution of corporate conveyances of interest in real property to eliminate the requirement that the signature of corporate executive officers needs to be attested to by another corporate official, eliminates the requirement that the instrument be sealed with the corporate seal, amends the ten-year statute of limitations to cover conveyance of real property which will no longer be under seal under this bill, and eliminates the necessity of recording a corporate resolution authorizing the signatories to corporate documents when the instrument is signed by certain executive officials.***

CURRENT LAW: Current law requires that a conveyance of corporate real property must be signed by an executive officer of the corporation, that the officer's signature and authority be attested to by another corporate officer, and that the instrument be sealed with the corporate seal. The current 10-year statute of limitation applies to instruments under seal. The law requires for deeds of the Home Owners Loan Corporation or any corporation where the majority of the stock is owned by the US government, that a resolution of the board of directors of the corporation authorizing the corporate officers to sign deeds on behalf of the corporation be recorded.

BILL ANALYSIS: Section 1 of the bill expands the types of corporate officers that may execute corporate conveyances of real property to include those authorized by corporate resolution. This section also provides that the corporate seal does not have to be included on the instrument in order for the execution of the instrument to be valid.

Section 2 adds a new statutory section to provide that the seal of a signing party to a conveyance of an interest in real property is not necessary but only the seal of the notary public is required.

Section 3 amends the ten-year statute of limitations law to include an instrument conveying an interest in real property, since the requirement for the seal is eliminated in Section 2 of the bill and the current ten-year statute of limitation refers to instruments under seal.

Section 4 eliminates the requirement that a corporate officer's signature must be attested to in order for the execution of the instrument on behalf of the corporation to be valid. This section also permits a corporation to authorize some person other than the statutorily listed corporate officers to execute instruments on behalf of the corporation by a corporate resolution that is recorded to show the authorization. This section makes it clear that a resolution does not need to be recorded to validate the signature authority of the statutorily listed corporate officers.

EFFECTIVE DATE: Sections 1 and 4 become effective October 1, 1999. The other sections become effective when the bill becomes law and apply to instruments recorded prior to or after that date thereby validating the execution of instruments that might not have been invalid under current law, except for those instruments subject to pending litigation.

S761-SMRU-001

NORTH CAROLINA
1899 – 1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

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Senate Bill 761 - Update Corporate Conveyancing

The North Carolina Bar Association Real Property Section submits this legislation which accomplishes two primary purposes. First, it allows execution of documents conveying property from a corporation to be signed and attested by a broader range of company officials than previously allowed. Section 47-41.01 is amended to employ the terms "official" and "attesting official" of a corporation. Both of these terms are defined and are broader than the corporate officers currently listed in Section 47-41.01. Additionally, a corporate conveyance is allowed with the signature of only one such official before a notary without attestation. Many other states allow corporate real property instruments (such as deeds) to be executed by only one corporate officer. Often companies in other states with such laws will execute North Carolina documents this way; the result is delays in closings and recordation of documents. SB 761 would eliminate these delays.

The second portion of the bill amends N.C.G.S. §39-6.5 to remove the requirement of a seal in the conveyance of an interest in real property. The requirement of the notary or other officer acknowledging a signature is not removed. Additionally, N.C.G.S. §1-47(2) is amended to bring actions upon an instrument of conveyance of an interest in real property which are not under seal within the ten-year statute of limitations. Finally, N.C.G.S. §47-18.3 is amended to cover proof of execution under the above revised law, and allows recordation of a resolution authorizing an agent of the corporation to execute deeds in that county.

The North Carolina Bar Association recommends passage of this important legislation.

27510 April 19, 1999

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 761

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

S761-ARU-001 Page 1 of __

Date 4-22 ,1999

Comm. Sub. [ ]
Amends Title [ ]

Senator

moves to amend the bill on page 5, lines 27 and 28,
by rewriting the lines to read:
"executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, ~~and attested or countersigned by another person~~"; and

on page 6, line 9,
by rewriting the line to read:
"~~lands or other~~ an interest in real property which is transferable by ~~deed~~ instrument which is duly executed by"; and

on page 6, lines 19 and 20,
by deleting the words "a deed" and substituting the words "an instrument" both places they appear; and

on page 6, line 21,
by inserting between the words "vice-president," and "treasurer," the words "assistant vice-president,"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 761

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

S761-ARU-001 Page 2 of __

on page 6, line 27,
by deleting the words "prior to" and substituting the words "before, on,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 888

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~
(1) Anhydrous ammonia.
(1a) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for

an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be

sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or

amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~ Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or

any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund; however, if the analysis was performed by the State Bureau of Investigation Crime Laboratory the funds shall be deposited into the Department of Justice Special Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. Section 1 of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 888:
Drug Law Amendments

BILL ANALYSIS

Committee:	Senate Judicary 1	**Introduced by:**	Senator Cooper
Date:	April 20, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: This bill is a recommendation of the Attorney General's Office. The bill makes the following substantive changes to current law:

1) Adds several new immediate precursor chemicals to the current list of chemicals that are unlawful for a person to possess when the person has the intent to manufacture a controlled substance or to distribute the immediate precursor chemical knowing or having reasonable cause to believe that the chemical will be used to manufacture a control substance.

2) Deletes the current statutory language that refers to the offense of selling, manufacturing, delivering, or possessing a certain number off "dosage units" of amphetamines. The bill adds the offense of "trafficking in amphetamine" to the subsection that makes it a felony to "traffic in methamphetamine" by selling, manufacturing, delivering, transporting or possessing 28 grams or more of the drug.

3) Increases the punishment for selling, manufacturing, delivering, transporting or possessing 28 grams or more of methamphetamine. The increased punishment also applies to the selling, manufacturing, delivering, transporting or possessing 28 grams or more of amphetamine.

4) Requires the restitution paid by a convicted person for the expense of analyzing a controlled substance to be deposited into the Department of Justice Special Fund, if the analysis was performed by the SBI.

5) Requires the court to order a person convicted for an offense under Article 5 of Chapter 90 involving the manufacture of a controlled substance to make restitution for the actual cleanup to the law enforcement agency that cleaned up the clandestine laboratory used to manufacture the controlled substance.

BILL ANALYSIS:

Section 1. Section 1 adds anhydrous ammonia, anthranilic acid, iodine, lithium, red phosphorous, and sodium to the list of immediate precursor chemicals that are unlawful to possess if they are possessed by a person who: 1) has the intent to use the chemical to manufacture a controlled substance; or 2) has the intent to distribute the chemicals knowing or having reasonable cause to believe that the chemicals will be used to manufacture a controlled substance.

Section 1 also eliminates the language that refers to the amount of illegal amphetamines that a person sells, manufactures, delivers, transports, or possesses in terms of tablets, capsules or dosage units. The offense of "trafficking in amphetamine" is now set forth in the same manner as the offense of "trafficking

in methamphetamine." A person convicted for "trafficking in methamphetamine or amphetamine" shall be punished, as follows, if the quantity of such substance or mixture involved:

a) Is 28 grams or more, but less than 200 grams, the person is punished as a Class F felon sentenced to a minimum term of 70 months and a maximum of 84 months and shall be fined not less than $50,000; **Currently, the person is punished as a Class G felon, with a sentence of a minimum of 35 months and a maximum of 42 months, and a fine of at least $50,000.**

b) Is 200 grams or more, but less than 400 grams, the person shall is punished as a Class E felon sentenced to a minimum term of 90 months and a maximum of 117 months and shall be fined not less than $100,000. **Currently, the person is punished as a Class F felon, with a sentence of a minimum of 70 months and a maximum term of 84 months, and a fine of at least $100,000.**

c) Is 400 grams or more, such person shall be punished as a Class C felon sentenced to a minimum term of 225 months and a maximum of 279 months and shall be fined not less than $250,000. **Currently, the person is punished as a Class D felon, with a sentence of a minimum of 175 months and a maximum term of 219 months, and a fine of at least $250,000.**

Section 2. Section 2 of the bill requires any restitution paid by a defendant for the expense of analyzing a control substance to be deposited into the Department of Justice Special Fund, if the analysis was preformed by the SBI. Currently, the restitution is deposited into the General Fund.

Section 2 also requires the court to order a person convicted of manufacturing a controlled substance to make restitution to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances. The amount of restitution shall include personnel overtime, equipment and supplies.

Section 3. Effective Date. Section 1 becomes effective December 1, 1999, and applies to offenses committed on or after that date. Section 2 becomes effective when it becomes law.

§ 90-88. Authority to control.

(a) The Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article, except as provided in subsection (d) of this section. A petition by the Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the Commission, as a matter of right.

(a1) In making a determination regarding a substance, the Commission shall consider the following:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) The risk to the public health;

(7) The potential of the substance to produce psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the Commission shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the Commission designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes places [place] 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by G.S. [Chapter] 150B is required if the Commission makes a decision to similarly control a substance, but any rule so adopted shall be filed pursuant to Article 5 of Chapter 150B. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to G.S. [Chapter] 150B within 180 days of its decision to object.

(e) The Commission shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco.

(g) The Commission shall similarly exempt from the provisions of this Article any chemical agents and diagnostic reagents not intended for administration to humans or other animals, containing controlled substances which either (i) contain additional adulterant or denaturing agents so that the resulting mixture has no significant abuse potential, or (ii) are packaged in such a form or concentration that the particular form as packaged has no significant abuse potential, where such substance was exempted by the Federal Bureau of Narcotics and Dangerous Drugs.

(h) Repealed by Session Laws 1987, c. 413, s. 4.

(i) The North Carolina Department of Health and Human Services shall maintain a list of all preparations, compounds, or mixtures which are excluded, exempted and excepted from control under any schedule of this Article by the United States Drug Enforcement Administration and/or the Commission. This list and any changes to this list shall be mailed to the North Carolina Board of Pharmacy, the State Bureau of Investigation and each district attorney of this State.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

REVISED REPORT

Tuesday, April 20, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **769** Amend Larceny of Ginseng
Sequential Referral: None
Recommended Referral: None

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

S.B. **297** Various Limited Partnership Law Changes
Draft Number: PCS 7663
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **746** Structured Settlement Protection Act
Draft Number: PCS 1707
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Senator Cooper sign

(1)

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-20-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joan Schaer	NC Nurses Association
Steve Reinhard	Ragsdale Liggett, PLLC-Raleigh
Tom Cook	Wyrick Robbins Yates & Ponton LLP-Raleigh
SAM JOHNSON	ATTY
Jim Ahler	NCACPA
Kate McGuire	NCCNP
Marian Dodd	League of Women Voters NC
Mary Bell	Div. of Aging
Angela S. Walden	NC Dept of Labor
Linda A. Pope	Sec. of State
Kendall Barnett	Sec. of State
Brenda Brown	NHC Special Needs Task Force
Jane Jones	Cape Fear Council of Govts Area Agency on Aging
Judy Smith	NC Div of Aging
K. DAVID	INTERN

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Bisset	New Hanover Regional Medical Center 2131 S. 17th Street. Wilmington, N.C. 28403
Angie Olson	Clare Bridge of Wilmington 3501 Converse Dr. Wilmington, NC 28403
Gayle Ginsberg	New Hanover Co. Dept. of Aging 2222 S. College RD Wilmington NC 28403
JANET LICHTNER	NEW HANOVER CTY EMERGENCY MGMT VOLUNTEER - WILMINGTON NC
Eric Tolbert	NC Division of Emergency Management 116 W. Jones St, Raleigh, NC 27603
Doug Duncan	N.C. Forestry Association Raleigh NC
Melissa Lovell	DOJ
Bonnie Cramer	DHHS
Becky Brown	Labor
James Andrews	NC State AFL-CIO
Dana Lopa	NCDOL
Mike Okun	NC AFL-CIO
Ann Case	NCRMA
Jimmy Fullbright	Hunton & Williams
Burton Craige	NCATL

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Worth	Carolina Healthcare System
David Simmons	Zebulon D. Alley, PA
HUGH TILSON	NCHA
John Weeks	NC A Long Term Care
Lora Nelson	NCAHTC7,
John WATTERS	N.C. Attorney General's Office
Stacy Flannery	NC Health Care Facilities Assoc.
Vandana Shah	Attny Gen office
Alan Heisel	" " "
Rob Hillman	Office of the State Auditor
W. Emerson Teer	Wake Co Emerg. Mgmt.
Dan Summers	New Hanover Co Emerg. Mgmt
Carl Goodwin	OSP
Jerry A. Miller	New Hanover County Emerg. Management
Andrew J. Reed	Cornelia Nixon Davis Health Care Center

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Herron	Herron Co.
Merrell Chestnut	AG's Office
Phil Lehmen	AGO
[illegible]	AGO
Phil Peale	"
Joe McClees	McClees Consulting, INC
Henri McClees	McClees Consulting, INC
John Loaston	PTC

MINUTES
SENATE JUDICIARY I, COMMITTEE
APRIL 22, 1999

The Senate Judiciary I Committee met on April 22, 1999 at 9:30 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Odom to explain **Senate Bill 12 – AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE OF THE PEOPLE.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 12 for discussion. The motion carried by a majority voice vote.

Senator Clodfelter moved to amend the Proposed Committee Substitute on Page 18, Line 29. The motion carried by a majority voice vote. (Amendment attached.)

Senator Soles moved to amend the Proposed Committee Substitute on Page 2, Line 6 and Page 2, Lines 10 and 11. The motion carried by a majority voice vote. (Amendment attached.)

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 12 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Garrou was recognized to explain **Senate Bill 331 – AN ACT TO REQUIRE REGISTRATION AS A SEX OFFENDER FOR CERTAIN ADDITIONAL OFFENSES.**

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

Senator Allran was recognized to explain **Senate Bill 120 – AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.**

Senator Allran moved to adopt a Proposed Committee Substitute to Senate Bill 120 for discussion. motion

The following people were recognized to speak on the bill:

Randolph Cloud, representing the Governor's Institute on Alcohol &

Substance Abuse (in favor of)
Danny Sellers, with the Alcohol Law Enforcement Division (in favor of)
Marvin Waters, with the ABC Commission (in favor of)
James Wicker, President of Wicker Mart chain (in favor of)
Steve Levitas, representing the N. C. Association of Convenience Stores (in favor of parts of the bill)
Fran Preston, Executive Director of the N. C. Retail Merchants Association (in favor of parts of the bill)

After discussion by the Committee, Senator Cooper asked that the bill be brought back at the next meeting.

Senator Clodfelter was recognized to explain **Senate Bill 835 – AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATE AND MODERN BUSINESS PRACTICES.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 835 for discussion. The motion carried by a majority voice vote.

Senator Soles moved to give the Proposed Committee Substitute to Senate Bill 835 a favorable report and re-refer it to the Finance Committee. The motion carried by a majority voice vote.

Senator Rand was recognized to explain **Senate Bill 915 – AN ACT TO CREATE A TOBACCO RESERVE FUND FOR TOBACCO PRODUCT MANUFACTURERS NOT PARTICIPATING IN THE MASTER SETTLEMENT AGREEMENT WITH THE STATE OF NORTH CAROLINA.**

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

Senator Soles, as Acting Chairman, recognized Senator Cooper to continue the discussion of **Senate Bill 888 – AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.**

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

Senator Cooper was recognized to explain **Senate Bill 885 – AN ACT CLARIFYING THE AUTHORITY OF THE STATE AUDITOR TO EXAMINE STATE EMPLOYEES PERSONNEL RECORDS.**

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

Senator Cooper recognized Senator Rand to explain **Senate Bill 800 – AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO CONDUCT EN BANC PROCEEDINGS.**

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

Senator Clodfelter was recognized to explain **Senate Bill 773 – AN ACT TO CLARIFY THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATIONS ORDINANCES.**

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

Senator Rand was recognized to explain **Senate Bill 637 – AN ACT TO EXPAND THE LAW OF ASSAULT TO PROTECT SCHOOL PERSONNEL AND SCHOOL VOLUNTEERS.**

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

Senator Hartsell was recognized to explain **Senate Bill 527 – AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS OR SEMAPHORES ON STATE HIGHWAYS IN EMERGENCY SITUATIONS.**

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

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: **Thursday, April 22, 1999**
TIME: **9:30 - 11:00 a.m.**
ROOM: **1027**

The following bills or resolutions will be considered:

SB 12	Judicial Appt/Voter Retention	Odom
SB 120	Up Some Underage Sales Penalties	Allran
SB 331	Amend Sex Offender Registry Laws	Garrou
SB 527	Emergency Traffic Ordinances	Hartsell
SB 637	Exp. Assault-School Personnel	Rand
SB 773	Clarify Annexation Remand	Clodfelter
SB 800	En Banc Procedure	Rand
SB 835	Revise Laws Governing Mergers	Clodfelter
SB 837	Torrens Registration System	Allran
SB 885	State Auditor Records Access	Cooper
SB 888	Drug Law Amendments	Cooper
SB 915	Tobacco Res. Fund/Nonpart. Mfg.	Rand

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 22, 1999

SB 12	Judicial Appt/Voter Retention	Odom
SB 120	Up Some Underage Sales Penalties	Allran
SB 331	Amend Sex Offender Registry Laws	Garrou
SB 527	Emergency Traffic Ordinances	Hartsell
SB 637	Exp. Assault-School Personnel	Rand
SB 773	Clarify Annexation Remand	Clodfelter
SB 800	En Banc Procedure	Rand
SB 835	Revise Laws Governing Mergers	Clodfelter
SB 837	Torrens Registration System	Allran
SB 885	State Auditor Records Access	Cooper
SB 888	Drug Law Amendments	Cooper
SB 915	Tobacco Res. Fund/Nonpart. Mfg.	Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 12

Short Title: Judicial Appt./Voter Retention. (Public)

Sponsors: Senators Odom; Ballance, Carter, Clodfelter, Dannelly, Gulley, Hartsell, Hoyle, Jordan, Kerr, Kinnaird, Lee, Lucas, Martin of Guilford, Miller, Phillips, Plyler, Purcell, Rand, Reeves, Shaw of Cumberland, Warren, Weinstein, and Wellons.

Referred to: Judiciary I.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, 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 right and 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, so far as may be, from the influences and necessities of partisan political activity.

(3) Nomination, confirmation, 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 nominate a person to fill the vacancy. Prior to appointment, such nominations by the Governor shall be subject to confirmation of the General Assembly by three-fifths of the members of each house present and voting prior to appointment. For the purposes of this section, creation of a new judgeship within the Appellate Division creates a vacancy.

Each house of the General Assembly shall vote on confirmation within 60 calendar days of the date of nomination, except that no day shall be included within that calculation if it is:

(a) Between sine die adjournment of one regular session and convening of the next regular session; or

(b) During any period when the General Assembly has adjourned a regular session for more than 30 days jointly as provided under Section 20 of Article II of this Constitution.

If a nomination is made during either of the periods listed in subdivision (a) or (b) of this subsection, the Governor may convene the General Assembly in extra session for the purpose of considering confirmation of the nomination. No action of that extra session shall be valid after the second calendar day of that session, and that extra session may not consider any matters other than rules for the extra session, confirmation of the nomination, and adjournment sine die. The nomination may not be confirmed in any extra session other than one called under this subsection.

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 nomination is confirmed. 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.

At the last statewide election for members of the General Assembly held before the expiration of a regular term of office, 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.

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, confirmation, and appointment as prescribed in this section. In such case, the Governor may only nominate a person of the same political affiliation as the justice or judge who has not been retained in office. For the purpose of this section, the political affiliation of a nominee for justice or judge is determined as of 24 months preceding the date of the vacancy for which the nomination is made.

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. 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, confirmation, 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 his term of office, the resulting vacancy shall be filled by nomination, confirmation, 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, confirmation, 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 the Governor, confirmed by the General Assembly, 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 and Confirmation of Justices and Judges, Retention Elections.

"§ 7A-4.1. Nomination of justices and judges by Governor and confirmation by General Assembly.

(a) The office of Chief Justice and Justice of the Supreme Court and Judge of the Court of Appeals are filled by nomination by the Governor subject to confirmation by the General Assembly in accordance with Section 16 of Article IV of the Constitution.

(b) Nominees are subject to confirmation as provided in this subsection. A nominee is confirmed by passage of a joint resolution of the General Assembly. The Governor may withdraw a nomination at any time.

"§ 7A-4.2. Confirmation procedures.

(a) A legislative committee to which the issue of confirmation is referred may conduct an investigation of the 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 committee any information that the nominee determines to be appropriate.

(b) The committee shall be allowed to inspect the files of the Judicial Standards Commission by request of the chair of the committee. Notwithstanding the provisions of G.S. 7A-377, the files of the Judicial Standards Commission shall be made available to the committee. Testimony and other evidence presented to the committee is privileged in any action for defamation.

"**§ 7A-4.3. Governor to issue commissions to justices and judges.**

Every person duly nominated by the Governor as Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals and duly confirmed by the General Assembly shall be appointed by the Governor and shall procure from the Governor a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the joint resolution of confirmation.

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-4.4. 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-4.5. 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 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. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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S12-PCSSE-001
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill 12
THIS IS A DRAFT 21-APR-99 16:24:55
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Judicial App./Voter Retention. (Public)

Sponsors:

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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 right and 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, so far as may be, 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 office 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 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.

"**§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 appealate 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: 1)information the Commission believes would be helpful to the citizens of North Carolina; and 2)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 is 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 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 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 subsection:

"(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, and racial 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 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.

SENATE BILL 12:
Judicial Appt./Voter Retention

BILL ANALYSIS

Committee:	Judiciary !	**Introduced by:**	Senator Odom
Date:	April 22, 1999	**Summary by:**	Jo B. McCants
Version:	SB12-PCSSE-001		Committee Co-Counsel

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 Judicial Nomination Commission shall nominate persons to the Governor to fill vacancies in the offices of Chief Justice, Associate Justice, or Judge of the Appellate Division.

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 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 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 judges in office on January 1, 2001, whose term extends beyond that date shall end on June 30, 2003. These 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 to chapter 7A of the General Statutes subject to the passage of the constitutional amendment. The new article sets forth the process for nominating and appointing Appellate Court Judges. The article also sets forth the process for retention elections.

a.) Nominations:

- The Judicial Nomination Commission (Commission) will nominate candidates for the Governor to consider when making appointments to the appellate courts.
- The Commission will consist of 18 members. The membership will include at least 6 nonattorneys. The members of the commission will serve staggered 4-year terms.
- The Commission is created within the Administrative Office of the Courts for budgetary purposes.
- The Commission will solicit judicial nominations from interested persons and members of the general public to fill appellate court vacancies.

- The Commission is allowed to inspect the files of the Judicial Standards Commission upon the request of the committee chair.
- The Commission must nominate at least 3 and no more than 5 persons to be considered by the Governor for judicial appointment within 60 days of any vacancy.
- The Commission must issue a report on justices and judges standing for retention election 90 days before the retention election. The report may include a recommendation by the Commission for or against the justice or judge's retention.

b.) Appointment:

- The Governor will make appointments to the appellate courts.
- The Governor may appoint a person nominated by the Commission.
- The Governor will issue a commission to all persons appointed to the appellate courts.

c.) 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.

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 in the 2000 election.

Finally, the proposed committee substitute encourages the appointing authorities to the Judicial Nomination Commission to 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.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 12

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

S12-PCSSE-001

Page 1 of __

Date 4-22 ,1999

Comm. Sub. [YES]
Amends Title []
S12-PCSSE-001

Senator Clodfelter

moves to amend the bill on page 18, line 29,
by rewriting the line to read:

"gender, ethnic, racial, and geographical diversity in the
membership of the".

SIGNED Daniel G Clodfelter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-22-99

S. B. No. 12-PCSSE-001 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) SOLES

moves to amend the bill on page 2, line 6

( ) WHICH CHANGES THE TITLE

by DELETING THE WORDS "RIGHT AND"; AND

ON ~~PAGE~~ PAGE 2, LINES 10 AND 11,

BY DELETING THE WORDS "FREE, SO FAR AS MAY BE," AND SUBSTITUTING THE WORD "FREE"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 331

Short Title: Amend Sex Offender Registry Laws. (Public)

Sponsors: Senators Garrou, Odom; Carter, Hagan, Harris, Lucas, Metcalf, Phillips, Reeves, and Weinstein.

Referred to: Judiciary I.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REGISTRATION AS A SEX OFFENDER FOR CERTAIN ADDITIONAL OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "County registry" means the information compiled by the sheriff of a county in compliance with this Article.

(1b) "Division" means the Division of Criminal Statistics of the Department of Justice.

(1c) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1d) "Offense against a minor" means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent or legal custodian: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following: an attempt, solicitation, or conspiracy to commit any of

these offenses; aiding and abetting any of these offenses; accessory before the fact and accessory after the fact to any of these offenses.

(2) "Penal institution" means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(3) "Release" means discharged or paroled.

(4) "Reportable conviction" means:

a. A final conviction for an offense against a minor, or for a sexually violent offense, ~~or an attempt~~ a final conviction for an attempt, solicitation, or conspiracy to commit any of those ~~offenses.~~ offenses, a final conviction for aiding and abetting any of those offenses, or a final conviction for accessory before the fact or accessory after the fact to any of those offenses.

b. A final conviction in another state of an offense, which if committed in this State, would have been an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: an attempt, solicitation, or conspiracy to

commit any of these offenses; aiding and abetting any of these offenses; accessory before the fact and accessory after the fact to any of these offenses.

(6) "Sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) "Sheriff" means the sheriff of a county in this State.

(8) "Statewide registry" means the central registry compiled by the Division in accordance with G.S. 14-208.14."

Section 2. G.S. 14-208.26 reads as rewritten:

"§ 14-208.26. Registration of certain juveniles adjudicated delinquent for committing certain offenses.

(a) When a juvenile is adjudicated delinquent for ~~committing~~ a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part.

(a1) For purposes of this section, a violation of any of the offenses listed in subsection (a) of this section includes all of the following: (i) the commission of any of those offenses, (ii) the attempt, conspiracy, or solicitation of another to commit any of those offenses, (iii) aiding and abetting any of those offenses, and (iv) accessory before the fact and accessory after the fact to any of those offenses.

(b) If the court finds that the juvenile is a danger to the community and must register, the presiding judge shall conduct the notification procedures specified in G.S. 14-208.8. The chief court counselor of that district shall file the registration information for the juvenile with the appropriate sheriff."

Section 3. G.S. 14-208.32 reads as rewritten:

"§ 14-208.32. Application of Part.

This Part does not apply to a juvenile who is tried and convicted as an adult for ~~committing or attempting~~ committing, attempting, conspiring, or soliciting another to commit a sexually violent offense or an offense against a minor. This Part does not apply to a juvenile who is tried and convicted as an adult for aiding and abetting a sexually violent offense or an offense against a minor, or who is convicted as an accessory before the fact or an accessory after the fact to a sexually violent offense or an offense against a minor. A juvenile who is convicted of one of those offenses as an adult is subject to the registration requirements of Part 2 and Part 3 of this Article."

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

SENATE BILL 331:
Amend Sex Offender Registry Laws

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Garrou and Senator Odom
Date:	April 22, 1999		
Version:	1	**Summary by:**	Jo B. McCants Committee Co-Counsel

SUMMARY: This bill amends several definitions contained in Article 27A of Chapter 14 (Sex Offender and Public Programs). The terms that have been amended are "offense against a minor", "reportable conviction", and "sexually violent offense." The bill also adds attempt, conspiracy, solicitation and the adding and abetting of certain offenses that if committed by a juvenile requires the court to determine if the juvenile has to register as a sex offender.

BILL ANALYSIS:

Section 1. Section 1 amends the definition of three terms. The first term amended is "offense against a minor." Under this bill, the definition is amended to include an attempt, solicitation, or conspiracy to commit kidnapping, child abduction, or felonious restraint. The definition also includes aiding and abetting or being an accessory before or after the fact to a kidnapping, child abduction, or felonious restraint .

Currently, an offense against a minor means the kidnapping, abduction or felonious restraint of a minor, when the person committing the offense is not the minor's parent.

The second term amended is "reportable conviction." Under this bill, a solicitation or conspiracy to commit an offense against a minor or to commit a sexually violent offense would be a reportable conviction. In addition, a final conviction for aiding and abetting or being an accessory before or after the fact of committing an offense against a minor or sexually violent offense would be a reportable conviction.

Currently, a reportable conviction only includes a final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit either of those offenses. The current law also includes final convictions in another state or a federal jurisdiction that would have been an offense against a minor or a sexually violent offense within this State.

The term "sexually violent offense" is also amended to include the attempt, solicitation, or conspiracy to commit an offense defined by statute as a sexually violent offense. The aiding and abetting of a sexually violent offense, as well as, being an accessory before or after the fact to a sexually violent offense is also included in the definition.

Currently, a sexually violent offense is first degree rape, second degree rape, first degree sexual offense, second degree sexual offense, attempted rape or sexual offense, intercourse and sexual offense with certain victims, incest between near relatives, employing or permitting a minor to assist in offenses against public morality and decency, first degree sexual exploitation of a minor, second degree sexual

exploitation of a minor, third degree sexual exploitation of a minor, participating in prostitution, promoting prostitution, and taking indecent liberties with children.

Section 2. Section 2 adds the following offenses to the current list of offenses that if committed by a juvenile who is at least 11 and adjudicated delinquent may result in the juvenile's registration as a sex offender:

1) the attempt, conspiracy, or solicitation of another to commit the offense of first degree rape, second degree rape, first degree sexual offense, or second degree sexual offense;

2) the aiding and abetting of the offense of first degree rape, second degree rape, first degree sexual offense, second degree sexual offense or attempted rape or sexual offense; and

3) the offense of being an accessory before or after the fact of committing the offense of first degree rape, second degree rape, first degree sexual offense, second degree sexual offense.

Section 3. Section 3 provides that the requirements of Part 1 of Article 27A (Sex Offender and Public Protection Registration Programs) does not apply to a juvenile who is **tried and convicted as an adult** for attempting, conspiring, or soliciting another to commit a sexually violent offense or an offense against a minor. In addition, the requirements do not apply to a juvenile who is tried as an adult for aiding and abetting a sexually violent offense or offense against a minor, or who is convicted as an accessory before or after the fact for the same offenses.

Currently, Part 1 does not apply to a juvenile who is tried and convicted as an adult for committing or attempting to commit a sexually violent offense or an offense against a minor. These juveniles are subject to registration under Parts 2 and 3 of the Act. (See attached statutes: G.S. 14-208.7(Registration under Part 2), and G.S. 14-208.21 (Registration under Part 3)).

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

§ 14-208.7.

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph; and

(4) The person's fingerprints.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

§ 14-208.21. Registration procedure for sexually violent predator; application of Part 2 of this Article.

The provisions of Part 2 of this Article apply to a person classified as a sexually violent predator unless provided otherwise by this Part. The procedure for registering as a sexually violent predator is the same as under Part 2 of this Article.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 120

Short Title: Up Some Underage Sales Penalties. (Public)

Sponsors: Senators Allran; Carpenter, Cochrane, Forrester, Foxx, Garwood, Hartsell, Jordan, Metcalf, Moore, Phillips, and Shaw of Guilford.

Referred to: Judiciary I.

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.

Whereas, underage drinking has always been a matter of grave concern for the General Assembly; and

Whereas, Parents Who Care About Underage Drinking in Catawba County became involved and concerned about recent incidences of death and hospitalization due to alcohol poisoning of teens in their county; and

Whereas, following supporting data from Catawba County is probably similar to the situations in most, if not all, of North Carolina's counties:

(1) 65% of 8th graders; 75% of 10th graders; and 89% of seniors report having consumed alcohol at least once.

(2) 48% of 8th graders; 75% of 10th graders; and 76% of seniors report having consumed alcohol within the last 12 months.

(3) 24% of 8th graders; 47% of 10th graders; and 51% of seniors report having consumed alcohol within the last month.

(4) 24% of 10th graders and 32% of seniors report having consumed alcohol three or more times during the last month before the survey was taken.

(5) 14% of 8th graders; 28% of 10th graders; and 36% of seniors having reported to have drunk more than five drinks in a row during the two weeks before the survey was taken.

(6) 11% of 10th graders and 14% of seniors having reported to have drunk more than five drinks in a row as much as three or more times within the three weeks before the survey was taken; and

Whereas, underage drinking is a matter of statewide concern; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-302A. Penalties for certain sales to underage persons.**

(a) A violation of G.S. 18B-302(a) shall be a Class 1 misdemeanor. When the violator is a person, other than an ABC permittee, the punishment imposed shall be:

(1) For a first offense:

a. A fine of at least one thousand dollars ($1,000); and

b. An order to complete supervised community service of no less than 150 hours.

(2) For a second or subsequent offense:

a. The maximum fine permitted by law; and

b. Incarceration for a period of at least 30 days.

(b) A violation of G.S. 18B-302(c)(2) shall be a Class 1 misdemeanor and upon conviction punishment imposed shall be:

(1) For a first offense:

a. A fine of at least one thousand dollars ($1,000); and

b. An order to complete supervised community service of no less than 150 hours.

(2) For a second or subsequent offense:

a. The maximum fine permitted by law; and

b. Incarceration for a period of at least 30 days.

(c) The fines imposed pursuant to this section shall be used by the local school administrative unit receiving them for alcohol use prevention education programs."

Section 2. This act becomes effective December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S120-CSRU-003
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 120
THIS IS A DRAFT 6-APR-99 19:23:19
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Up Some Underage Sales Penalties. (Public)

Sponsors:

Referred to:

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.

Whereas, underage drinking has always been a matter of grave concern for the General Assembly; and

Whereas, Parents Who Care About Underage Drinking in Catawba County became involved and concerned about recent incidences of death and hospitalization due to alcohol poisoning of teens in their county; and

Whereas, studies in North Carolina indicate:

(1) 40% of North Carolina high school students acknowledge consuming alcohol in the previous 30 days.

(2) 12% of the State's 11th graders and 18% of the State's 12th graders acknowledge driving a motor vehicle after drinking in the previous 30 days.

(3) Over 50% of North Carolina high school students who currently drink began drinking by age 13.

(4) 79% of high school students say that obtaining alcohol by having an adult buy it for them is very easy and 60% say that obtaining alcohol from the homes of other teens or adults is also very easy.

(5) 66% of North Carolina teens believe their peers are getting alcohol from someone over 21 who is buying it for them, and 80% of the time it is an acquaintance rather than a stranger that buys it.
(6) 30% of North Carolina teens say they know a store in their community where someone under 21 can easily buy beer.
(7) 19% of 17 year-olds report they have attended a party where alcohol was supplied by parents.
(8) In 1996, more than 200 North Carolina youth were hospitalized for primary alcohol-related diagnoses; and

Whereas, young people who begin drinking before age 15 are more than twice as likely to develop alcohol abuse as those who begin drinking at age 21; and

Whereas, underage drinking is a matter of statewide concern; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-302A. Penalties for certain offenses related to underage persons.**

(a) A violation of G.S. 18B-302(a) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars ($250.00) as authorized by G.S. 15A-43(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars ($1,000) as authorized by G.S. 15A-43(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(b) A violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-43(b)(9) and a

requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars ($1,000) as authorized by G.S. 15A-43(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(c) In addition to the punishments imposed under this section, the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505."

Section 2. This act becomes effective December 1, 1999 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 835

Short Title: Revise Law Governing Mergers. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES.

The General Assembly of North Carolina enacts:

PART I. CORPORATIONS.

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

(1) By the chairman of the board of ~~directors of a domestic or foreign corporation,~~ directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person duly authorized to do so by the unincorporated entity."

Section 1.2. G.S. 55-1-40(9) reads as rewritten:

"(9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit

corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government."

Section 1.3. G.S. 55-1-40 is amended by adding the following new subdivisions, to be placed by the Codifier of Statutes in the appropriate order, to read:

"(24a) 'Surviving entity' means the corporation or unincorporated entity that is the surviving entity of a merger pursuant to G.S. 55-11-10.

(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 1.4. G.S. 55-4-05 reads as rewritten:

"**§ 55-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to its real property in this State is ~~transferred~~ vested by operation of law upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of that corporation, a certificate reciting ~~such change or transfer~~ the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the corporation or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

"(1) 'Business combination' includes any merger or consolidation of a corporation with or into any other ~~corporation,~~ corporation or any unincorporated entity, or the sale or lease of all or any substantial

part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars ($5,000,000)) of any other entity."

Section 1.6. G.S. 55-9-04(d) reads as rewritten:

"(d) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. This Article shall be broadly construed so as to be applicable to any transaction reasonably calculated to avoid the application of the provisions hereof including, without limitation, any merger or other recapitalization, initiated by or for the benefit of an other entity that owns more than twenty percent (20%) of the voting shares, which would reincorporate a corporation under the laws of another ~~state.~~ state or which would reorganize a corporation as an unincorporated entity."

Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;".

Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-11-10. Merger with business entity.**

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102 and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic corporations may merge with one or more unincorporated entities and, if desired, one or more foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;
(2) The name of the merging business entity that shall survive the merger;
(3) The terms and conditions of the merger;
(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55-11-03, unless the shareholder approval is not required under subsection (g) of G.S. 55-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors without further shareholder action.

(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;
(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;
(3) The name and address of the surviving business entity;
(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;
(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger; and
(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic

corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect upon the effectiveness of the articles of merger. Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic corporation is the surviving business entity, its articles of incorporation and bylaws shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of this Chapter; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly

pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 1.9. G.S. 55-15-21 reads as rewritten:

"**§ 55-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by the law, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign corporation by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such ~~statutory merger was effected.~~ foreign corporation was incorporated. If the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State the ~~articles of merger or~~ certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to transact business in this ~~State and the~~ State, the type of entity and name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each merged~~ the foreign corporation was authorized to transact business in this State may thereafter be made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2); and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger or~~ certificate and the application for withdrawal, if required, ~~conforms~~ conform to law ~~he~~ the Secretary shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month and year of the filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART II. NONPROFIT CORPORATIONS.

Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or business corporation shall be executed:

(1) By the presiding officer of the board of directors ~~of a domestic or foreign corporation,~~ by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity shall be executed by a person duly authorized to do so by the unincorporated entity."

Section 2.2. G.S. 55A-1-40 is amended by adding the following new subdivision to read:

"(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 2.3. G.S. 55A-4-05 reads as rewritten:

"**§ 55A-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to real property in this State is ~~transferred~~ vested by operation of law upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of the corporation, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded by the corporation or its successor in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for recording in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be recorded in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the amended new name of the corporation or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 2.4. G.S. 55A-11-02 reads as rewritten:

"**§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only with:

(1) A charitable or religious corporation;

(2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation;

(3) A wholly owned foreign or domestic corporation (business or nonprofit) or unincorporated entity which is not a charitable or religious ~~corporation,~~ corporation or charitable or religious organization, provided the charitable or religious corporation or charitable or religious organization is the ~~surviving corporation~~ survivor in the merger and continues to be a charitable or religious corporation or charitable or religious organization after the merger; or

(4) A business or nonprofit corporation (foreign or domestic) or unincorporated entity other than a charitable or religious corporation, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become ~~members~~ members, as 'members' is defined in G.S. 55A-1-40 or G.S. 57C-1-

03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the ~~surviving corporation.~~ survivor in the merger.

(b) At least 20 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General.

(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than ~~a membership~~ an interest as a member, as defined in G.S. 55A-1-40(16), in the ~~surviving corporation.~~ survivor of the merger. The Attorney General may consent to the transaction, or the court shall approve the transaction, if it is fair and not contrary to the public interest."

Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and".

Section 2.6. G.S. 55A-11-07 reads as rewritten:

"**§ 55A-11-07. Bequests, devises, and gifts.**

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the ~~surviving corporation~~ survivor in the merger unless the will or other instrument otherwise specifically provides."

Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-11-09. Merger with unincorporated entity.**

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic nonprofit corporations may merge with one or more unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic business corporations, or foreign business corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each merging business entity;

(2) Each merging domestic nonprofit corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection; and

(3) The merger complies with G.S. 55A-11-02, if applicable.

(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation or bylaws that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

After a plan of merger has been approved by a domestic nonprofit corporation, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors.

(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic business corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect upon the effectiveness of the articles of merger. Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation and bylaws shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon converted, and the former holders of the interests

are entitled only to the rights provided to them in the articles of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

(7) If the surviving business entity is not a domestic business corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic business corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic business corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 2.8. G.S. 55A-15-21 reads as rewritten:

"**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to conduct affairs in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for ~~the merged~~ the foreign corporation by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which ~~such statutory merger was effected.~~ the foreign corporation was incorporated. If the surviving or resulting ~~corporation~~ is not authorized to conduct affairs in this State, the ~~articles of merger or~~ certificate shall be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to conduct affairs in this ~~State and~~ State, the type of entity and the name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to conduct affairs in this State;

(2) ~~That~~ A statement that the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time ~~each merged~~ the foreign corporation was

authorized to conduct affairs in this State may thereafter be made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger~~ or certificate and the application for withdrawal, if required, conforms to law the Secretary of State shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed', and the hour, day, month, and year of filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART III. LIMITED LIABILITY COMPANIES.

Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign limited liability company must be executed:

(1) By a manager of ~~a domestic or foreign~~ the limited liability company;

(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;

(3) If the limited liability company has not been formed, by an organizer; or

(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person duly authorized to do so by the business entity."

Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

"(3a) Business entity. -- A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited

liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State."

Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

"(15) Membership interest or interest. -- ~~All~~ In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including without limitation the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management."

Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

"(a) One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing. A limited liability company may also be formed through the conversion of another business entity pursuant to Part 1 of Article 9A of this Chapter."

Section 3.5. G.S. 57C-2-34 reads as rewritten:

"**§ 57C-2-34. Real property records.**

(a) Whenever the name of any domestic or foreign limited liability company holding title to real property in this State is changed upon amendment to its articles of organization or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon ~~merger~~ merger, consolidation, or conversion of ~~two or more~~ the limited liability ~~companies,~~ company, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited liability company holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 3.6. G.S. 57C-7-12 reads as rewritten:

"**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign limited liability company authorized to transact business in this State ceases its separate existence as a result of a statutory ~~merger~~ merger, consolidation, or conversion permitted by the laws of the state or country under which it was organized, or converts into another type of entity permitted by the laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under the laws of which ~~such statutory merger~~ the foreign limited liability company was ~~effected.~~ organized. If the surviving or resulting entity is not authorized to transact business in this State, the ~~articles of merger or~~ certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign limited liability company authorized to transact business in this ~~State and~~ State, the type of entity and name of the surviving or resulting ~~entity~~ entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each~~ the merged foreign limited liability company was authorized to transact business in this State, may thereafter be made ~~on such foreign limited liability company~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger or~~ certificate and the application for withdrawal, if required, conforms to law, the Secretary of State shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month, and year of filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign limited liability company~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

Section 3.7. Article 9 of Chapter 57C of the General Statutes is repealed. Chapter 57C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 9A.

"Conversion and Merger.

"Part 1. Conversion to Domestic Limited Liability Company.

"§ 57C-9A-01. Conversion.

(a) A domestic limited liability company may convert to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership Act.

(b) A foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State) may convert to a domestic limited liability company if:

(1) The converting business entity complies with the requirements of this Part; and

(2) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity and the converting business entity complies with those laws, if the organization and internal affairs of the converting business entity are not governed by the laws of this State.

"§ 57C-9A-02. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;

(2) The terms and conditions of the conversion; and

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

The plan of conversion may also contain other provisions relating to the conversion.

(b) In the case of a domestic limited partnership or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of organization for the resulting domestic limited

liability company become effective, the plan of conversion may be amended or terminated to the extent provided in the plan of conversion.

"**§ 57C-9A-03. Filing of articles of organization by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of organization to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 57C-2-21, the articles of organization shall state:

(1) That the domestic limited liability company is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

If the plan of conversion is abandoned before the articles of organization become effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of organization reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect upon the effectiveness of the articles of organization as provided in G.S. 57C-1-23.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-04. Effects of conversion.**

Upon the conversion becoming effective:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited liability company;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited liability company without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited liability company;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic limited liability company or into the right to receive cash or other property, are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity, made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"Part 2. Merger.

"§ 57C-9A-05. Merger.

A domestic limited liability company may merge with one or more other domestic limited liability companies or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each of the other merging business entities; and

(2) Each merging domestic limited liability company and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 57C-9A-06. Plan of merger.

(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited liability company, the plan of merger must be approved in the manner provided in its articles of organization or a written operating agreement for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no such provision, by the unanimous consent of its members. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited liability company, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned

(subject to any contractual rights) as provided in the plan of merger, articles of organization, or written operating agreement or, if not so provided, as determined by the managers of the domestic limited liability company in accordance with G.S. 57C-3-20(b).

"**§ 57C-9A-07. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-06, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law;

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger as provided in G.S. 57C-1-23.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-08. Effects of merger.**

Upon the merger becoming effective:

(1) Each other merging business entity merges into the surviving business entity. The separate existence of each merging business entity, except the surviving business entity, ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of that merging business entity."

PART IV. PARTNERSHIPS.

Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 7. Conversion and Merger.

"§ 59-73.1. Definitions.

As used in this Part:

(1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32, but excluding a domestic limited partnership as defined in G.S. 59-102.

(2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, a domestic partnership, or any other partnership as defined in G.S. 59-36 formed under a law other than the laws of this State (including a limited liability partnership).

(3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and any other limited liability partnership formed under a law other than the laws of this State but excluding a domestic limited partnership as defined in G.S. 59-102 and a foreign limited partnership as defined in G.S. 59-102.

"**§ 59-73.2. Conversion of domestic partnership.**

A domestic partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9 of Chapter 57C of the General Statutes, the North Carolina Limited Liability Company Act, or to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership Act.

"**§ 59-73.3. Merger.**

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

(1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-73.4. Plan of merger.**

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;
(3) The terms and conditions of the merger; and
(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no such provision by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the partners.

"**§ 59-73.5. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.4, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;
(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;
(3) The name and address of the surviving business entity;
(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;
(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger; and
(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting

shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.6. Effects of merger.**

(a) Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment subject, in the case of real estate or other property owned by a merging domestic or foreign nonprofit corporation, to any and all conditions to which the property was subject prior to the merger;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for the merging business entity whose existence ceases in the merger;

(5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests in each merging business entity are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation (as defined in G.S. 55-1-40), any rights they may have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly

pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

"**§ 59-73.7. Filing of documents.**

(a) To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:

(1) The document must contain the information required by this Part. It may contain other information as well.

(2) The document must be typewritten or printed.

(3) The document must be in the English language.

(4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person duly authorized to do so by the business entity.

(5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.

(6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.

(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

A document is corrected by:

(1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.

Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely

affected by the correction. As to those persons, articles of correction are effective when filed.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Articles of Merger	$50.00
Articles of Correction	$10.00

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 p.m. Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.

(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59 p.m. Eastern Standard Time, on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the partnership or its representative.

If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.

The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure

Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.

Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

(k) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger or conversion of the partnership, a certificate reciting the merger or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger or conversion shall appear in the 'Grantor' index and the name of the other entity holding title to the real property by virtue of the merger or conversion shall appear in the 'Grantee' index."

Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

"(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including without limitation, a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including, without limitation, a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic limited liability company as defined in G.S. 57C-1-03, a

foreign limited liability company as defined in G.S. 57C-1-03, a domestic limited partnership, a foreign limited partnership, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State)."

Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

"(d) A limited partnership may also be formed through the conversion of another business entity in accordance with Part 10A of this Article."

Section 4.4. G.S. 59-204 reads as rewritten:

"**§ 59-204. Execution of ~~certificates.~~ documents.**

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this Article must be signed by at least one general partner. Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person duly authorized to do so by the business entity.

(b) Any person may sign a certificate by an attorney-in-fact.

(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true."

Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

"(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies."

Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same

fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the ~~amendment~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the ~~amendment~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 10A. Conversion and Merger.

"**§ 59-1007. Conversions.**

(a) A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, the North Carolina Limited Liability Company Act.

(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:

(1) Such converting business entity complies with the requirements of G.S. 59-1008 and G.S. 59-1009; and

(2) If the organization and internal affairs of the converting business entity are not governed by the laws of this State, the conversion is permitted by laws of the state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.

"**§ 59-1008. Plan of conversion.**

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited partnership into which the converting business entity shall convert;

(2) The terms and conditions of the conversion; and

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such

provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36, whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before a certificate of limited partnership for the resulting domestic limited liability company becomes effective, the plan of conversion may be amended or abandoned to the extent provided in the plan of conversion.

"**§ 59-1009. Filing of certificate of limited partnership by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of limited partnership to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall state:

(1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity, its type of business, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion was approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned before the certificate of limited partnership becomes effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the certificate of limited partnership reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect upon the effectiveness of the certificate of limited partnership as provided in G.S. 59-206.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1010. Effects of conversion.**

(a) Upon the effectiveness of the conversion:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited partnership;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited partnership without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited partnership;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"**§ 59-1011. Merger.**

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of G.S. 59-1012 and G.S. 59-1013, and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-1012. Plan of merger.**

(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval for a merger with the type(s) of business entities contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if there is no such provision, as determined by all partners.

"**§ 59-1013. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1012, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;

(5) The effective date and time of the merger if it is not to be effective at the time of filing of articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address

upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1014. Effects of merger.**

(a) Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title of all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation as defined in G.S. 55-1-40, any rights they have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger.

The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of such merging business entity."

PART V. CONFORMING CHANGES.

Section 5.1. G.S. 47-18.1 reads as rewritten:

"**§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger, consolidation, or conversion.**

(a) If title to real property in this State is ~~transferred~~ vested by operation of law in another entity upon the ~~merger or consolidation of two or more corporations,~~ merger, consolidation, or conversion of an entity, such ~~transfer~~ vesting is effective against lien creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly owning the property, only from the time of registration of a certificate thereof as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of ~~merger or consolidation,~~ merger, consolidation, or conversion, to be furnished for registration, and shall adopt such fees as are necessary for the expense of such certification. If the ~~corporation~~ entity involved is not a domestic ~~corporation,~~ entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The name of the ~~corporation~~ entity formerly owning the property shall appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 5.2. G.S. 105-129.4(e) reads as rewritten:

"(e) Change in Ownership of Business. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism."

Section 5.3. G.S. 105-129.27(d) reads as rewritten:

"(d) Change in Ownership of Facility. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

"(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a ~~merger~~ merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property."

Section 5.5. G.S. 105-130.17(e) reads as rewritten:

"(e) Any corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a ~~merger~~ merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 75 days after the date it terminates its business in this State."

Section 5.6. G.S. 105-163.010(2) reads as rewritten:

"(2) Business. -- A corporation, partnership, limited liability company, association, or sole proprietorship operated for profit."

Section 5.7. G.S. 105-163.013(f) reads as rewritten:

"(f) Transfer of Registration. -- A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving ~~corporation~~ company would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, conversion, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company."

Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

"(1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:

a. The death of the taxpayer.

b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.

c. A merger, conversion, consolidation, or similar transaction requiring approval by the ~~shareholders~~ owners of the qualified business venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, conversion, consolidation, or other similar transaction."

Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

"(2) To a ~~partnership~~ partnership, limited liability company, or corporation as an incident to the formation of the ~~partnership or corporation and~~ partnership, limited liability company, or corporation, no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Internal Revenue ~~Code,~~ Code as defined in G.S. 105-228.90, or to a partnership, limited liability company, or corporation by ~~merger or~~ merger, conversion, or consolidation in accordance with ~~G.S. 55-11-06.~~ applicable law."

Section 5.10. G.S. 105-228.29 reads as rewritten:

"§ 105-228.29. Conveyances excluded.

The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by intestacy, by gift, by ~~merger~~ merger, conversion, or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor."

PART VI. EFFECTIVE DATE.

Section 6. This act becomes effective October 1, 1999, and applies to contracts entered into and mergers, consolidations, or conversions effective on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 835
Proposed Committee Substitute S835-PCS1717-RU

Short Title: Revise Law Governing Mergers. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

The General Assembly of North Carolina enacts:

PART I. CORPORATIONS.

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

(1) By the chairman of the board of ~~directors of a domestic or foreign corporation,~~ directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person duly authorized to do so by the unincorporated entity."

Section 1.2. G.S. 55-1-40(9) reads as rewritten:

"(9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government."

Section 1.3. G.S. 55-1-40 is amended by adding the following new subdivisions, to be placed by the Codifier of Statutes in the appropriate order, to read:

"(24a) 'Surviving entity' means the corporation or unincorporated entity that is the surviving entity of a merger pursuant to G.S. 55-11-10.

(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 1.4. G.S. 55-4-05 reads as rewritten:

"**§ 55-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to its real property in this State is ~~transferred~~ vested by operation of law upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of that corporation, a certificate reciting ~~such change or transfer~~ the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the corporation or the

name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

"(1) 'Business combination' includes any merger or consolidation of a corporation with or into any other ~~corporation,~~ corporation or any unincorporated entity, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars ($5,000,000)) of any other entity."

Section 1.6. G.S. 55-9-04(d) reads as rewritten:

"(d) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. This Article shall be broadly construed so as to be applicable to any transaction reasonably calculated to avoid the application of the provisions hereof including, without limitation, any merger or other recapitalization, initiated by or for the benefit of an other entity that owns more than twenty percent (20%) of the voting shares, which would reincorporate a corporation under the laws of another ~~state.~~ state or which would reorganize a corporation as an unincorporated entity."

Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;".

Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-11-10. Merger with business entity.**

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102 and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic corporations may merge with one or more unincorporated entities and, if desired, one or more foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55-11-03, unless the shareholder approval is not required under subsection (g) of G.S. 55-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors without further shareholder action.

(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect upon the effectiveness of the articles of merger. Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic corporation is the surviving business entity, its articles of incorporation and bylaws shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon converted, and the former holders of the interests

are entitled only to the rights provided to them in the articles of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of this Chapter; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 1.9. G.S. 55-15-21 reads as rewritten:

"**§ 55-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by the law, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign corporation by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such ~~statutory merger was effected.~~ foreign corporation was incorporated. If the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State the ~~articles of merger or~~ certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to transact business in this ~~State and the~~ State, the type of entity and name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each merged~~ the foreign corporation was authorized to transact business in this State may thereafter be

made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2); and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger or~~ certificate and the application for withdrawal, if required, ~~conforms~~ conform to law ~~he~~ the Secretary shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month and year of the filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART II. NONPROFIT CORPORATIONS.

Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or business corporation shall be executed:

(1) By the presiding officer of the board of directors ~~of a domestic or foreign corporation,~~ by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity shall be executed by a person duly authorized to do so by the unincorporated entity."

Section 2.2. G.S. 55A-1-40 is amended by adding the following new subdivision to read:

"(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 2.3. G.S. 55A-4-05 reads as rewritten:

"§ 55A-4-05. Real property records.

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to real property in this State is ~~transferred~~ vested by

operation of law upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of the corporation, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded by the corporation or its successor in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for recording in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be recorded in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the amended new name of the corporation or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 2.4. G.S. 55A-11-02 reads as rewritten:

"**§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only with:

(1) A charitable or religious corporation;

(2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation;

(3) A wholly owned foreign or domestic corporation (business or nonprofit) or unincorporated entity which is not a charitable or religious ~~corporation,~~ corporation or charitable or religious organization, provided the charitable or religious corporation or charitable or religious organization is the ~~surviving corporation~~ survivor in the merger and continues to be a charitable or religious corporation or charitable or religious organization after the merger; or

(4) A business or nonprofit corporation (foreign or domestic) or unincorporated entity other than a charitable or religious corporation, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return,

transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become ~~members~~ members, as 'members' is defined in G.S. 55A-1-40 or G.S. 57C-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the ~~surviving corporation.~~ survivor in the merger.

(b) At least 20 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General.

(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than ~~a membership~~ an interest as a member, as defined in G.S. 55A-1-40(16), in the ~~surviving corporation.~~ survivor of the merger. The Attorney General may consent to the transaction, or the court shall approve the transaction, if it is fair and not contrary to the public interest."

Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and".

Section 2.6. G.S. 55A-11-07 reads as rewritten:

"**§ 55A-11-07. Bequests, devises, and gifts.**

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the ~~surviving corporation~~ survivor in the merger unless the will or other instrument otherwise specifically provides."

Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-11-09. Merger with unincorporated entity.**

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic nonprofit corporations may merge with one or more unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic business corporations, or foreign business corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each merging business entity;

(2) Each merging domestic nonprofit corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection; and

(3) The merger complies with G.S. 55A-11-02, if applicable.

(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation or bylaws that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

After a plan of merger has been approved by a domestic nonprofit corporation, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors.

(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;
(3) The name and address of the surviving business entity;
(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;
(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger; and
(6) If the surviving business entity is not a domestic limited liability company, a domestic business corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect upon the effectiveness of the articles of merger. Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;
(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving entity without reversion or impairment;
(3) The surviving business entity has all liabilities of each merging business entity;
(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving

business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation and bylaws shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

(7) If the surviving business entity is not a domestic business corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic business corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic business corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 2.8. G.S. 55A-15-21 reads as rewritten:

"**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to conduct affairs in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for ~~the merged~~ the foreign corporation by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which ~~such statutory merger was effected.~~ the foreign corporation was incorporated. If the surviving or resulting entity ~~corporation~~ is not authorized to conduct affairs in this State, the ~~articles of merger or~~ certificate shall be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to conduct affairs in this ~~State and~~ State, the type of entity and the name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to conduct affairs in this State;

(2) ~~That~~ A statement that the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time ~~each merged~~ the foreign corporation was authorized to conduct affairs in this State may thereafter be made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger~~ or certificate and the application for withdrawal, if required, conforms to law the Secretary of State shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed', and the hour, day, month, and year of filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART III. LIMITED LIABILITY COMPANIES.

Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign limited liability company must be executed:

(1) By a manager of ~~a domestic or foreign~~ the limited liability company;

(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;

(3) If the limited liability company has not been formed, by an organizer; or

(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person duly authorized to do so by the business entity."

Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

"(3a) Business entity. -- A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State."

Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

"(15) Membership interest or interest. -- ~~All~~ In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including without limitation the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management."

Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

"(a) One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing. A limited liability company may also be formed through the conversion of another business entity pursuant to Part 1 of Article 9A of this Chapter."

Section 3.5. G.S. 57C-2-34 reads as rewritten:

"**§ 57C-2-34. Real property records.**

(a) Whenever the name of any domestic or foreign limited liability company holding title to real property in this State is changed upon amendment to its articles of organization or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon ~~merger~~ merger, consolidation, or conversion of ~~two or more~~ the limited liability ~~companies,~~ company, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The

former name of the limited liability company holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 3.6. G.S. 57C-7-12 reads as rewritten:

"**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign limited liability company authorized to transact business in this State ceases its separate existence as a result of a statutory ~~merger~~ merger, consolidation, or conversion permitted by the laws of the state or country under which it was organized, or converts into another type of entity permitted by the laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under the laws of which ~~such statutory merger~~ the foreign limited liability company was ~~effected.~~ organized. If the surviving or resulting entity is not authorized to transact business in this State, the ~~articles of merger or~~ certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign limited liability company authorized to transact business in this ~~State and~~ State, the type of entity and name of the surviving or resulting ~~entity~~ entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each~~ the merged foreign limited liability company was authorized to transact business in this State, may thereafter be made ~~on such foreign limited liability company~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger or~~ certificate and the application for withdrawal, if required, conforms to law, the Secretary of State shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month, and year of filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;
(3) Issue a certificate of withdrawal; and
(4) Send to the ~~foreign limited liability company~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

Section 3.7. Article 9 of Chapter 57C of the General Statutes is repealed. Chapter 57C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 9A.

"Conversion and Merger.

"Part 1. Conversion to Domestic Limited Liability Company.

"§ 57C-9A-01. Conversion.

(a) A domestic limited liability company may convert to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership Act.

(b) A foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State) may convert to a domestic limited liability company if:

(1) The converting business entity complies with the requirements of this Part; and
(2) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity and the converting business entity complies with those laws, if the organization and internal affairs of the converting business entity are not governed by the laws of this State.

"§ 57C-9A-02. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;
(2) The terms and conditions of the conversion; and
(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

The plan of conversion may also contain other provisions relating to the conversion.

(b) In the case of a domestic limited partnership or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the

approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of organization for the resulting domestic limited liability company become effective, the plan of conversion may be amended or terminated to the extent provided in the plan of conversion.

"**§ 57C-9A-03. Filing of articles of organization by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of organization to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 57C-2-21, the articles of organization shall state:

(1) That the domestic limited liability company is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

If the plan of conversion is abandoned before the articles of organization become effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of organization reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect upon the effectiveness of the articles of organization as provided in G.S. 57C-1-23.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-04. Effects of conversion.**

Upon the conversion becoming effective:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited liability company;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited liability company without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited liability company;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic limited liability company or into the right to receive cash or other property, are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity, made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"Part 2. Merger.

"§ 57C-9A-05. Merger.

A domestic limited liability company may merge with one or more other domestic limited liability companies or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each of the other merging business entities; and

(2) Each merging domestic limited liability company and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 57C-9A-06. Plan of merger.

(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited liability company, the plan of merger must be approved in the manner provided in its articles of organization or a

written operating agreement for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no such provision, by the unanimous consent of its members. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited liability company, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, articles of organization, or written operating agreement or, if not so provided, as determined by the managers of the domestic limited liability company in accordance with G.S. 57C-3-20(b).

"§ 57C-9A-07. Articles of merger.

(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-06, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law;

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger as provided in G.S. 57C-1-23.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-08. Effects of merger.**

Upon the merger becoming effective:

(1) Each other merging business entity merges into the surviving business entity. The separate existence of each merging business entity, except the surviving business entity, ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger.

The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of that merging business entity."

PART IV. PARTNERSHIPS.

Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 7. Conversion and Merger.

"**§ 59-73.1. Definitions.**

As used in this Part:

(1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32, but excluding a domestic limited partnership as defined in G.S. 59-102.

(2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, a domestic partnership, or any other partnership as defined in G.S. 59-36 formed under a law other than the laws of this State (including a limited liability partnership).

(3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and any other limited liability partnership formed under a law other than the laws of this State but excluding a domestic limited partnership as defined in G.S. 59-102 and a foreign limited partnership as defined in G.S. 59-102.

"**§ 59-73.2. Conversion of domestic partnership.**

A domestic partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9 of Chapter 57C of the General Statutes, the North Carolina Limited Liability Company Act, or to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership Act.

"**§ 59-73.3. Merger.**

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

(1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to

the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-73.4. Plan of merger.**

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger; and

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no such provision by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the partners.

"**§ 59-73.5. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.4, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.6. Effects of merger.**

(a) Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment subject, in the case of real estate or other property owned by a merging domestic or foreign nonprofit corporation, to any and all conditions to which the property was subject prior to the merger;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for the merging business entity whose existence ceases in the merger;

(5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property

are thereupon so converted, and the former holders of the interests in each merging business entity are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation (as defined in G.S. 55-1-40), any rights they may have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

"**§ 59-73.7. Filing of documents.**

(a) To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:

(1) The document must contain the information required by this Part. It may contain other information as well.

(2) The document must be typewritten or printed.

(3) The document must be in the English language.

(4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person duly authorized to do so by the business entity.

(5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.

(6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.

(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

A document is corrected by:

(1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.

Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Articles of Merger	$50.00
Articles of Correction	$10.00

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 p.m. Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.

(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the

advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59 p.m. Eastern Standard Time, on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the partnership or its representative.

If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.

The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.

Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

(k) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger or conversion of the partnership, a certificate reciting the merger or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger or conversion shall appear in the 'Grantor' index and the name of the other entity

holding title to the real property by virtue of the merger or conversion shall appear in the 'Grantee' index."

Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

"(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including without limitation, a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including, without limitation, a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a domestic limited partnership, a foreign limited partnership, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State)."

Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

"(d) A limited partnership may also be formed through the conversion of another business entity in accordance with Part 10A of this Article."

Section 4.4. G.S. 59-204 reads as rewritten:

"**§ 59-204. Execution of ~~certificates.~~ documents.**

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this Article must be signed by at least one general partner. Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person duly authorized to do so by the business entity.

(b) Any person may sign a certificate by an attorney-in-fact.

(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true."

Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

"(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another

entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies."

Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the ~~amendment~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the ~~amendment~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 10A. Conversion and Merger.

"§ 59-1007. Conversions.

(a) A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, the North Carolina Limited Liability Company Act.

(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:

(1) Such converting business entity complies with the requirements of G.S. 59-1008 and G.S. 59-1009; and

(2) If the organization and internal affairs of the converting business entity are not governed by the laws of this State, the conversion is permitted by laws of the state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.

"§ 59-1008. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited partnership into which the converting business entity shall convert;
(2) The terms and conditions of the conversion; and
(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36, whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before a certificate of limited partnership for the resulting domestic limited liability company becomes effective, the plan of conversion may be amended or abandoned to the extent provided in the plan of conversion.

"**§ 59-1009. Filing of certificate of limited partnership by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of limited partnership to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall state:

(1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;
(2) The name of the converting business entity, its type of business, and the state or country whose laws govern its organization and internal affairs; and
(3) That a plan of conversion was approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned before the certificate of limited partnership becomes effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the certificate of limited partnership reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect upon the effectiveness of the certificate of limited partnership as provided in G.S. 59-206.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1010. Effects of conversion.**

(a) Upon the effectiveness of the conversion:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited partnership;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited partnership without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited partnership;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"**§ 59-1011. Merger.**

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of G.S. 59-1012 and G.S. 59-1013, and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-1012. Plan of merger.**

(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;
(3) The terms and conditions of the merger;
(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
(5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval for a merger with the type(s) of business entities contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if there is no such provision, as determined by all partners.

"**§ 59-1013. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1012, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;
(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;
(3) The name and address of the surviving business entity;
(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;
(5) The effective date and time of the merger if it is not to be effective at the time of filing of articles of merger; and
(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic

corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1014. Effects of merger.**

(a) Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title of all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation as defined in G.S. 55-1-40, any rights they have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of such merging business entity."

PART V. CONFORMING CHANGES.

Section 5.1. G.S. 47-18.1 reads as rewritten:

"**§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger, consolidation, or conversion.**

(a) If title to real property in this State is ~~transferred~~ vested by operation of law in another entity upon the ~~merger or consolidation of two or more corporations,~~ merger, consolidation, or conversion of an entity, such ~~transfer~~ vesting is effective against lien creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly owning the property, only from the time of registration of a certificate thereof as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of ~~merger or consolidation,~~ merger, consolidation, or conversion, to be furnished for registration, and shall adopt such fees as are necessary for the expense of such certification. If the ~~corporation~~ entity involved is not a domestic ~~corporation,~~ entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The name of the ~~corporation~~ entity formerly owning the property shall appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 5.2. G.S. 105-129.4(e) reads as rewritten:

"(e) Change in Ownership of Business. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a

tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism."

Section 5.3. G.S. 105-129.27(d) reads as rewritten:

"(d) Change in Ownership of Facility. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

"(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a ~~merger~~ merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property."

Section 5.5. G.S. 105-130.17(e) reads as rewritten:

"(e) Any corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a ~~merger~~ merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 75 days after the date it terminates its business in this State."

Section 5.6. G.S. 105-163.010(2) reads as rewritten:

"(2) Business. -- A corporation, partnership, limited liability company, association, or sole proprietorship operated for profit."

Section 5.7. G.S. 105-163.013(f) reads as rewritten:

"(f) Transfer of Registration. -- A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving ~~corporation~~ company would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, conversion, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company."

Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

"(1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:

a. The death of the taxpayer.

b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.

c. A merger, conversion, consolidation, or similar transaction requiring approval by the ~~shareholders~~ owners of the qualified business venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, conversion, consolidation, or other similar transaction."

Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

"(2) To a ~~partnership~~ partnership, limited liability company, or corporation as an incident to the formation of the ~~partnership or corporation and~~ partnership, limited liability company, or corporation, no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Internal Revenue ~~Code,~~ Code as defined in G.S. 105-228.90, or to a partnership, limited liability company, or corporation by ~~merger or~~ merger, conversion, or consolidation in accordance with ~~G.S. 55-11-06.~~ applicable law."

Section 5.10. G.S. 105-228.29 reads as rewritten:

"§ 105-228.29. Conveyances excluded.

The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by intestacy, by gift, by ~~merger~~ merger, conversion, or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor."

PART VI. MUTUAL TO STOCK INSURANCE CONVERSION.

Section 6. Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-10-10. Mutual conversion to stock insurer.**

(a) A domestic mutual insurer may convert to a domestic stock insurer under a plan that is approved in advance by the Commissioner.

(b) The Commissioner shall not approve the plan unless:

(1) It is fair and equitable to the insurer's policyholders.

(2) It is adopted by the insurer's board of directors in accordance with the insurer's bylaws and approved by a vote of not less than two-thirds of the insurer's members voting on it in person, by proxy, or by mail at a meeting called for the purpose of voting on the plan, pursuant to reasonable notice and procedure as approved by the Commissioner. If the company is a life insurer, the right to vote may be limited, as its bylaws provide, to members whose policies are other than term or group policies and have been in effect for more than one year.

(3) Each policyholder's equity in the insurer is determinable under a fair and reasonable formula approved by the Commissioner. The equity shall be based upon the insurer's entire statutory surplus after deducting certificates of contribution, guaranty capital certificates, and similar evidences of indebtedness included in an insurer's statutory surplus.

(4) The policyholders entitled to vote on the plan and participate in the purchase of stock and distribution of assets include all policyholders on the date the plan was adopted by the insurer's board of directors.

(5) The plan provides that each policyholder specified in subdivision (4) of this subsection receives a preemptive right to acquire a proportionate part of all of the proposed capital stock of the insurer or of all of the stock of a corporation affiliated with the insurer within a designated reasonable period as the part is determinable under the plan of conversion; and to apply toward the purchase of the stock the amount of the policyholder's equity in the insurer under subdivision (3) of this subsection. The plan must provide for an equitable distribution of fractional interests.

(6) The plan provides for payment to each policyholder of the policyholder's entire equity in the insurer; with that payment to be applied toward the purchase of stock to which the policyholder is entitled preemptively or to be made in cash, or both. The cash payment may not exceed fifty percent (50%) of each policyholder's equity. The stock purchased, together with the cash payment, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of the mutual insurer.

(7) Shares are to be offered to policyholders at a price not greater than that of shares to be subsequently offered to others.

(8) The Commissioner finds that the insurer's management has not, through reduction of volume of new business written, through policy cancellations, or through any other means, sought to (i) reduce, limit, or affect the number or identity of the insurer's members entitled to participate in the plan or (ii) secure for the individuals constituting management any unfair advantage through the plan.

(9) The plan, when completed, provides that the insurer's capital and surplus are not less than the minimum required of a domestic stock insurer transacting the same kinds of insurance, are reasonable in relation to the insurer's outstanding liabilities, and are adequate to meet its financial needs.

(c) With respect to an insurer with a guaranty capital, the conversion plan shall be approved by a vote of not less than two-thirds of the insurer's guaranty capital shareholders and policyholders as provided for in subdivision (b)(2) of this section. The plan may provide for the issuance of stock in exchange for outstanding guaranty capital shares at their redemption value subject to the conditions in subsection (b) of this section.

(d) The Commissioner may schedule a public hearing on the proposed conversion plan.

(e) The Commissioner may retain, at the mutual insurer's expense, any attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed conversion plan.

(f) The corporate existence of the mutual company continues in the stock company created under this section. All assets, rights, franchises, and interests of the former mutual insurer, in and to real or personal property, are deemed to be transferred to and vested in the stock insurer, without any other deed or transfer; and the stock insurer simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

(g) No director, officer, or employee of the insurer shall receive:

(1) Any fee, commission, compensation, or other valuable consideration for aiding, promoting, or assisting in the conversion of the mutual insurer to a domestic stock insurer, other than compensation paid to any director, officer, employee of the insurer in the ordinary course of business; or

(2) Any distribution of the assets, surplus, or capital of the insurer as part of a conversion.

(h) The Commissioner may adopt rules to carry out the provisions of this section."

PART VII. HOMEOWNER ASSOCIATION REFUNDS.

Section 7. G.S. 55A-13-02(b) reads as rewritten:

"(b) Subject to the provisions of subsection (d) of this ~~section, (i) a~~ section:

(1) A corporation may make distributions to any entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor ~~section, and (ii) any~~ section.

(2) Any corporation other than a charitable or religious corporation may make distributions to any domestic or foreign corporation.

(3) Except as otherwise prohibited by statute, a corporation not operated for profit, the membership of which is limited to the owners or occupants of real property in a condominium, cooperative housing corporation or other real property development, having as its primary purposes the management, operation, preservation, maintenance and repair of common areas and improvements upon the real property owned by the members and the corporation or organization, may make distribution to its members of excess or surplus membership dues, fees or assessments remaining after the payment of or provisions for common expenses and any prepayment of reserves; provided that these distributions are in proportion to the dues, fees or assessments collected from the members."

PART VIII. EFFECTIVE DATE.

Section 8. This act becomes effective October 1, 1999, and applies to contracts entered into and mergers, consolidations, or conversions effective on or after that date.

SENATE BILL 835:
Revise Law Governing Mergers.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 22, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S835-PCS1717-RU		

SUMMARY: The Proposed Committee Substitute for Senate Bill 835 would clarify and conform laws governing the mergers, consolidations and conversions among business corporations, nonprofit corporations, partnerships, limited partnerships, limited liability companies and foreign entities. It would also provide for a method for conversion of mutual insurance companies to stock insurance companies, and would permit homeowner associations to refund excess dues and fees collected from association members.

CURRENT LAW: Current law provides procedures for some mergers, consolidations and conversions of business corporations, nonprofit corporations, and limited liability companies. There are no conversion/merger provisions for partnerships or limited partnerships.

BILL ANALYSIS: Parts I through V of Senate Bill 835 provide for a common, standardized form of mergers, consolidations and conversions for business corporations, nonprofit corporations, limited liability companies, partnerships and limited partnerships, permitting different forms of entities to merge and convert into other entity forms.

The standard provisions require a plan of merger or conversion adopted by the merging or converting entities, articles of merger or conversion filed with the Secretary of State, and defines the legal effects of the merger/conversion on title to real property, liabilities, pending actions, and the rights to succeed in interest. Provisions are also made for merger/conversions with foreign corporations, foreign nonprofits, foreign partnerships, foreign limited liability companies and other foreign entities.

Part VI sets out the procedure for the conversion of a mutual insurance company to a stock insurance company. This type of conversion must be approved by the Commissioner of Insurance and must provided that the policyholder in a mutual insurance company will own the same proportionate share of a stock insurance company as the policyholder owned in the mutual insurance company. This Part also insures that the officers, directors and employees of a mutual insurance company will not receive any separate compensation as a result of a conversion other than the compensation paid in the ordinary course of business.

Part VII amends the Nonprofit Corporation statute to permit homeowners associations that accumulate excess funds from its members, to distribute those excess funds to the members of the association in proportion to the fees collected from the members.

EFFECTIVE DATE: The bill becomes effective October 1, 1999 and applies to contracts entered into and mergers, consolidations and conversions effective on or after the effective date.

NORTH CAROLINA
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Senate Bill 835 – Revise Law Governing Mergers

A joint committee of the North Carolina Bar Association Business Law and Tax carefully reviewed the law pertaining to mergers and conversions among the different types of North Carolina business entities. Current law is unclear or ambiguous in some areas regarding merger and conversions. Recent developments in the business laws of other states also merited close attention. Senate Bill 835 contains the product of this work-- a framework for mergers among corporations, limited liability companies and partnerships.

Part I of the bill (sections 1.1 through 1.9) addresses mergers and conversions involving corporations, including foreign corporations authorized to transact business here. Part II of the bill (sections 2.1 through 2.8) covers nonprofit corporations. Limits were maintained on what types of mergers charitable and religious corporations could undergo without court approval.

Consistent with Senate Bill 660, *Revise Limited Liability Company Act*, which passed the Senate on April 21, 1999, Part III (sections 3.1 through 3.7) govern mergers and conversions involving limited liability companies (LLCs). This part includes an article found in most other states LLC acts outlining conversion by partnerships to LLCs and mergers of LLCs. Combined with SB 660, these provisions complete an update to the LLC laws first enacted in North Carolina in 1993.

Part IV (sections 4.1 through 4.7) amends the existing Uniform Partnership Act to add conversion and merger provisions mirroring those discussed above. Provisions are adapted from the LLC to ensure consistent treatment. Limited partnerships are also covered here, consistent with Senate Bill 279, *Limited Partnership/Prof. Liab. Changes*, which is scheduled for the Senate floor today.

Part V (sections 5.1 through 5.10) contains conforming changes needed for real property and tax records under Chapters 47 and 104 of the General Statutes.

Part VI contains language suggested by the Department of Insurance to govern conversion of mutual insurance company to a domestic stock insurance company, setting out the requirements for approval by the Commissioner of Insurance for such a conversion.

Part VII contains language applying to nonprofit corporations operating as homeowners' associations, authorizing refund to its members of excess or surplus dues, fees and assessments. The authority of homeowners' associations to make such refunds was unclear under the current law.

Part VIII specifies the effective date as October 1, 1999.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 915*

Short Title: Tobacco Reserve Fund/Nonparticipating Mfg. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE A TOBACCO RESERVE FUND FOR TOBACCO PRODUCT MANUFACTURERS NOT PARTICIPATING IN THE MASTER SETTLEMENT AGREEMENT WITH THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 35.

"Tobacco Reserve Fund.

"**§ 66-280. Definitions.**

As used in this Article:

(1) 'Adjusted for inflation' means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) 'Affiliate' means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms 'owns,' 'is owned,' and 'ownership' mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term 'person' means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) 'Allocable share' means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) 'Cigarette' means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term 'cigarette' includes 'roll-your-own' (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,' 0.09 ounces of 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

(5) 'Master Settlement Agreement' means the settlement agreement (and related documents) entered into on November 23, 1998, by the State and leading United States tobacco product manufacturers.

(6) 'Qualified escrow fund' means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with G.S. 66-281(b).

(7) 'Released claims' means Released Claims as that term is defined in the Master Settlement Agreement.

(8) 'Releasing parties' means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) 'Tobacco Product Manufacturer' means an entity that after the effective date of this Article directly (and not exclusively through any affiliate):

a. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of

subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

c. Becomes a successor of an entity described in sub-subdivision a. or b. of this subdivision.

The term 'Tobacco Product Manufacturer' shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of sub-subdivisions a. through c. of this subdivision.

(10) 'Units sold' means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or 'roll-your-own' tobacco containers). The Secretary of Revenue shall promulgate such rules as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

"**§ 66-281. Requirements.**

(a) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the effective date of this Article shall do one of the following:

(1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

a. 1999: $.0094241 per unit sold after the effective date of this Article.

b. 2000: $.0104712 per unit sold after the effective date of this Article.

c. For each of 2001 and 2002: $.0136125 per unit sold after the effective date of this Article.

d. For each of 2003 through 2006: $.0167539 per unit sold after the effective date of this Article.

e. For each of 2007 and each year thereafter: $.0188482 per unit sold after the effective date of this Article.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2) of section (a) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(3) To the extent not released from escrow under subdivisions (1) or (2) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the Attorney General that it is in compliance with this section. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(2) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of

subdivision (2) of subsection (a) of this section, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation."

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

SENATE BILL 915: Tobacco Reserve Fund/Nonparticipating Manufacturers.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 22, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 915 would require cigarette manufacturers who do not participate in the Master Tobacco Manufacturers Settlement Agreement with the State of North Carolina to pay into a qualified escrow fund to be used for the payment of judgments or settlement against the tobacco manufacturers for health related claims arising from tobacco use.

CURRENT LAW: Under the Master Settlement Agreement entered into between the State and the major tobacco manufacturers, in exchange for immunity from individual claims, the tobacco manufacturers have agreed to pay the State certain payments each year. A few of the smaller manufacturers did not participate in the Settlement and the Settlement will not apply to tobacco manufacturing companies formed in the future unless they voluntarily agree to participate.

BILL ANALYSIS: Senate Bill 915 implements one of the provisions of the Master Settlement Agreement by requiring non-participating manufacturers to either participate in the Master Settlement Plan or in the alternative to create a qualifying escrow account to be funded by annual payments calculated to equal the amount of payments the manufacturers would have otherwise been obligated for under the Master Settlement Agreement. These annual payments are to be held for 25 years to be available to pay claims of the State and local governments arising from health related problems attributable to tobacco products. The interest on the escrow account belongs to the manufacturer. Funds paid in excess of the amount that would be due under the Master Settlement Agreement are refunded annually and any annual payments remaining after 25 years are returned to the manufacturer.

The bill creates a new Article 35 in Chapter 66 entitled the Tobacco Reserve Fund. Under the new G.S. 66-281 a manufacturer would be required to either (i) participate in the Master Settlement Agreement and make payments thereunder, or (ii) place into escrow annually an amount based on an increasing formula in the bill tied to the number of individual cigarettes sold in the preceding year. The escrow account must be placed with a qualified disinterested financial institution.

The interest earned on the escrow goes to the manufacturer. The principal of the escrow fund is not to be available to the manufacturer for 25 years but is to be used to pay judgments or settlements of qualifying claims by the State or other parties. If the amount put into escrow in any one year exceeds the amount the manufacturer would have paid in under the Master Settlement Agreement, the excess shall be refunded to the manufacturer.

Annual payments will be accounted for separately and payments will be charged against earliest year deposits. Any annual payment remaining after 25 years is refunded to the manufacturer.

The bill authorizes the imposition by the court of civil penalties for the failure to make any annual payment, with the penalty possibly accruing to a total of 100% of the amount owed. In addition, if the manufacturer knowingly fails to make payments owed, civil penalties up to 300% may be imposed. A manufacturer that has two "knowing" violations shall be prohibited from selling cigarettes in the State for a period not to exceed two years.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 888

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~
(1) Anhydrous ammonia.
(1a) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for

an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be

sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or

amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~ Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or

any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund; however, if the analysis was performed by the State Bureau of Investigation Crime Laboratory the funds shall be deposited into the Department of Justice Special Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. Section 1 of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 888:
Drug Law Amendments

BILL ANALYSIS

Committee:	Senate Judicary 1	**Introduced by:**	Senator Cooper
Date:	April 20, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: This bill is a recommendation of the Attorney General's Office. The bill makes the following substantive changes to current law:

1) Adds several new immediate precursor chemicals to the current list of chemicals that are unlawful for a person to possess when the person has the intent to manufacture a controlled substance or to distribute the immediate precursor chemical knowing or having reasonable cause to believe that the chemical will be used to manufacture a control substance.

2) Deletes the current statutory language that refers to the offense of selling, manufacturing, delivering, or possessing a certain number off "dosage units" of amphetamines. The bill adds the offense of "trafficking in amphetamine" to the subsection that makes it a felony to "traffic in methamphetamine" by selling, manufacturing, delivering, transporting or possessing 28 grams or more of the drug.

3) Increases the punishment for selling, manufacturing, delivering, transporting or possessing 28 grams or more of methamphetamine. The increased punishment also applies to the selling, manufacturing, delivering, transporting or possessing 28 grams or more of amphetamine.

4) Requires the restitution paid by a convicted person for the expense of analyzing a controlled substance to be deposited into the Department of Justice Special Fund, if the analysis was performed by the SBI.

5) Requires the court to order a person convicted for an offense under Article 5 of Chapter 90 involving the manufacture of a controlled substance to make restitution for the actual cleanup to the law enforcement agency that cleaned up the clandestine laboratory used to manufacture the controlled substance.

BILL ANALYSIS:

Section 1. Section 1 adds anhydrous ammonia, anthranilic acid, iodine, lithium, red phosphorous, and sodium to the list of immediate precursor chemicals that are unlawful to possess if they are possessed by a person who: 1) has the intent to use the chemical to manufacture a controlled substance; or 2) has the intent to distribute the chemicals knowing or having reasonable cause to believe that the chemicals will be used to manufacture a controlled substance.

Section 1 also eliminates the language that refers to the amount of illegal amphetamines that a person sells, manufactures, delivers, transports, or possesses in terms of tablets, capsules or dosage units. The offense of "trafficking in amphetamine" is now set forth in the same manner as the offense of "trafficking

in methamphetamine." A person convicted for "trafficking in methamphetamine or amphetamine" shall be punished, as follows, if the quantity of such substance or mixture involved:

a) Is 28 grams or more, but less than 200 grams, the person is punished as a Class F felon sentenced to a minimum term of 70 months and a maximum of 84 months and shall be fined not less than $50,000; **Currently, the person is punished as a Class G felon, with a sentence of a minimum of 35 months and a maximum of 42 months, and a fine of at least $50,000.**

b) Is 200 grams or more, but less than 400 grams, the person shall is punished as a Class E felon sentenced to a minimum term of 90 months and a maximum of 117 months and shall be fined not less than $100,000. **Currently, the person is punished as a Class F felon, with a sentence of a minimum of 70 months and a maximum term of 84 months, and a fine of at least $100,000.**

c) Is 400 grams or more, such person shall be punished as a Class C felon sentenced to a minimum term of 225 months and a maximum of 279 months and shall be fined not less than $250,000. **Currently, the person is punished as a Class D felon, with a sentence of a minimum of 175 months and a maximum term of 219 months, and a fine of at least $250,000.**

Section 2. Section 2 of the bill requires any restitution paid by a defendant for the expense of analyzing a control substance to be deposited into the Department of Justice Special Fund, if the analysis was preformed by the SBI. Currently, the restitution is deposited into the General Fund.

Section 2 also requires the court to order a person convicted of manufacturing a controlled substance to make restitution to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances. The amount of restitution shall include personnel overtime, equipment and supplies.

Section 3. Effective Date. Section 1 becomes effective December 1, 1999, and applies to offenses committed on or after that date. Section 2 becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 885

Short Title: State Auditor Records Access. (Public)

Sponsors: Senators Cooper; and Martin of Guilford.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE AUTHORITY OF THE STATE AUDITOR TO EXAMINE STATE EMPLOYEE PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-64.7(a) reads as rewritten:

"(a) Access to Persons and Records. --

(1) The Auditor and his authorized representatives shall have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any State agency. The review of State tax returns shall be limited to matters of official business and the Auditor's report shall not violate the confidentiality provisions of tax laws.

(2) The Auditor and his duly authorized representatives shall have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation which is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to:

a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.

b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State. In order to determine that payments to providers of social and medical services are legal and proper, the providers of such services

will give the Auditor, or his authorized representatives, access to the records of recipients who receive such services.

(3) The Auditor shall, for the purpose of examination and audit authorized by this act, have the authority, and will be provided ready access, to examine and inspect all property, equipment, and facilities in the possession of any State agency or any individual, private corporation, institution, association, board, or other organization which were furnished or otherwise provided through grant, contract, or any other type of funding by the State of North Carolina, or the federal government.

(4) All contracts or grants entered into by State agencies or political subdivisions shall include, as a necessary part, a clause providing access as intended by this section.

(5) The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as they relate to transactions with any agency of the State."

Section 2. G.S. 147-64.6(d) reads as rewritten:

"(d) Reports and Work Papers. -- The Auditor shall maintain for 10 years a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under his authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of his office shall be retained according to an agreement between the Auditor and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, and notwithstanding the provisions of G.S. 126-24, pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the Auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before ~~them.~~ them, including criminal investigations.

Except as provided above, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential."

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

SENATE BILL 885:
State Auditor Records Access.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Cooper
Date:	April 20, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 885 would permit access by the State Auditor to the personnel files of State employees in connection with the Auditor's audit responsibilities and despite the confidentiality of these personnel records, authorizes the State Auditor to allow other State and federal agencies to inspect these records in connect with matters before those agencies, including criminal investigations.***

CURRENT LAW: The State Auditor does not have express authority to have access to State employees personnel records, but G.S. 126-24 does allow the head of the department where the records are kept to permit inspection of these records by officials of the State, federal or local governments when the department head determines that the inspection is "necessary and essential to the pursuance of a proper function of the agency". Current law permits the Auditor to share audit information with officials of other agencies, but personnel information is not allowed to be used for criminal or tax investigations.

BILL ANALYSIS: Section 1 of the bill adds personnel files of State agencies to the list of records the State Auditor is authorized to examine and copy.

Section 2 amends the authority of the State Auditor to share audit files with other State and federal officials, including personnel files, notwithstanding G.S. 126-34 (copy attached) which governs the confidentiality of these records, if the records are to be used by the other agency for some matter official before them, which could include a criminal investigation.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

§ 126-24. Confidential information in personnel files; access to such information.

All other information contained in a personnel file is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file in its entirety except for (i) letters of reference solicited prior to employment, or (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. An employee's medical record may be disclosed to a licensed physician designated in writing by the employee;

(2) The supervisor of the employee;

(3) Members of the General Assembly who may inspect and examine personnel records under the authority of G.S. 120-19;

(4) A party by authority of a proper court order may inspect and examine a particular confidential portion of a State employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the department head of the employee whose record is to be inspected or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Chapter, any department head may, in his discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to his department or whose personnel file is maintained in his department and the reasons therefor and may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that the release of such information or the inspection and examination of such file or portion thereof is essential to maintaining the integrity of such department or to maintaining the level or quality of services provided by such department; provided that prior to releasing such information or making such file or portion thereof available as provided herein, such department head shall prepare a memorandum setting forth the circumstances which the department head deems to require such disclosure and the information to be disclosed. The memorandum shall be retained in the files of said department head and shall be a public record.

(1975, c. 257, s. 1; 1977, c. 866, s. 10; 1977, 2nd Sess., c. 1207.)

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:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 22, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
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.

S800-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 773

Short Title: Clarify Annexation Remand. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATIONS ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-50(g) reads as rewritten:

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

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

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

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

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

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

Section 2. G.S. 160A-38(g) reads as rewritten:

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

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

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

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

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

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

Section 3. This act is effective with respect to ordinances remanded on or after October 1, 1999.

SENATE BILL 773:
Clarify Annexation Remand.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 22, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 773 clarifies the time a city has to take action after a court has remanded an appeal of an annexation ordinance.

CURRENT LAW: Current law requires a city to act on a remand from the court of an appeal on an annexation ordinance within three months from receipt of the court's instructions, otherwise the annexation proceeding is deemed void.

BILL ANALYSIS: Senate Bill 773 clarifies the time period for actions to be taken by the city after a remand by the court. It clarifies the time to be 90 days instead of three months and clarifies that the time begins to run the date of the entry of the order of the court's instruction instead of from receipt of the instructions.

EFFECTIVE DATE: The bill becomes effective October 1, 1999 and applies to ordinances remanded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 637

Short Title: Exp Assault of Schl Prsnl & Vols. (Public)

Sponsors: Senators Rand; Cooper and Gulley.

Referred to: Judiciary I.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LAW OF ASSAULT TO PROTECT SCHOOL PERSONNEL AND SCHOOL VOLUNTEERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-33 reads as rewritten:

"**§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.**

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

(1) through (3) Repealed by Session Laws 1995, c. 507, s. 19.5(b);

(4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;

(8) Repealed by Session Laws 1995, c. 507, s. 19.5(b);

(9) Commits an assault and battery against a sports official when the sports official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A "sports official" is a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. A "sports event" includes any interscholastic or intramural athletic activity in a primary, middle,

junior high, or high school, college, or university, any organized athletic activity sponsored by a community, business, or nonprofit organization, any athletic activity that is a professional or semiprofessional event, and any other organized athletic activity in the State.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

(1) Inflicts serious injury upon another person or uses a deadly weapon;

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

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

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

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

(6) Assaults a school employee or school volunteer when the employee or volunteer is discharging or attempting to discharge his or her duties as an employee or volunteer, or assaults a school employee or school volunteer as a result of the discharge or attempt to discharge that individual's duties as a school employee or school volunteer. For purposes of this subdivision, the following definitions shall apply:

a. "Duties" means:

1. All activities on school property;

2. All activities, wherever occurring, during a school authorized event or the accompanying of students to or from that event; and

3. All activities relating to the operation of school transportation.

b. "Employee" or "volunteer" means:

1. An employee of a local board of education; or a charter school authorized under G.S. 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes;

2. An independent contractor or an employee of an independent contractor of a local board of education, charter school authorized under G.S. 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of

Chapter 115C of the General Statutes, if the independent contractor carries out duties customarily performed by employees of the school; and

3. An adult who volunteers his or her services or presence at any school activity and is under the supervision of an individual listed in sub-sub-subdivision 1. or 2. of this sub-subdivision."

Section 2. This act becomes effective December 1, 1999, and applies to offenses 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.

SENATE BILL 637: Expand the Law on Assaults on School Personnel and Volunteers

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Rand
Date:	April 20, 1999	**Summary by:**	Jo B. McCants.
Version:	1		Committee Co-Counsel

SUMMARY: ***This bill amends current law regarding assaults, batteries, and affrays by making it a Class A1 misdemeanor for a person to assault a school employee or school volunteer when the employee or volunteer is discharging or attempting to discharge his or her duties as a school employee or school volunteer. It is also a Class A1 misdemeanor to assault a school employee or volunteer because the person has discharged or attempted to discharge the person's duties as a school employee or school volunteer. The act becomes effective on December 1, 1999, and applies to offenses committed on or after that date.***

CURRENT LAW: Currently, the following assaults are Class A1 misdemeanors:

(1) Assault inflicting serious injury upon another person or using a deadly weapon during the assault;

(2) Assault on a female;

(3) Assault on a child under the age of 12;

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

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

BILL ANALYSIS:

Section 1. Section one makes it a Class A1 misdemeanor to assault a school employee or a school volunteer who is discharging or attempting to discharge his or her duties. Also, a person is guilty of a Class 1 misdemeanor if he or she assaults a school employee or school volunteer as a result of the school employee or volunteer discharging or attempting to discharge their duties. A person can be found guilty of a Class A1 misdemeanor under this provision even if the assault on the school employee or school volunteer occurred off of the school's premises.

This section defines the word "**duties**" as:

1) All activities on school property;

2) All activities, wherever occurring, during a school authorized event or the accompanying of students to or from that event; and

3) All activities relating to the operation of school transportation.

The words "**employee or volunteer**" are defined as:

1) An employee of a local board of education, charter school, nonpublic school;

2) An independent contractor or an employee of an independent contractor of a local board of education, charter school or nonpublic school, if the independent contractor carries out duties customarily performed by employees of the school; and

3) An adult who volunteers his or her services or presence at any school activity and is under the supervision of an employee of the board of education, or an employee of charter school or nonpublic school; or under the supervision of an independent contractor or employee of an independent contractor of a local board of education.

Section 2. Effective Date. The act becomes effective December 1, 1999, and applies to all offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 527

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS OR SEMAPHORES ON STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"**§ 20-169. Powers of local authorities.**

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices and for the preemption of any signaling devices upon city streets or state highways within local government boundaries by the emergency vehicles set forth in G.S. 20-157 on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

Signs shall be erected giving notices of ~~such~~ the special limits and regulations."

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

SENATE BILL 527:
Emergency Traffic Ordinances

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Hartsell
Date:	April 22, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Counsel

SUMMARY: This bill allows local authorities to preempt any signaling device on a city street or state highway within the boundaries of the local government when necessary to accommodate police or fire department vehicles, ambulances, and rescue squad vehicles in emergency situations.

BILL ANALYSIS:

Local authorities currently have the authority to provide by ordinances for the regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous, prohibit other than one-way traffic on certain highways, and regulate the use of the highways by processions or assemblages. This bill only gives the local authority the power to preempt signal devices for emergency vehicles.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, April 26, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **901** Appointment of Juvenile Counsel
Sequential Referral: None
Recommended Referral: None

S.B. **1068** McGruff Crim. Backgd. Checks
Sequential Referral: None
Recommended Referral: None

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

S.B. **12** Judicial Appt./Voter Retention
Draft Number: PCS 3792
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **835** REvise Law Governing Mergers
Draft Number: PCS 1717
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: Will have Sen. Cooper sign

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Thursday, April 22, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **331** Amend Sex Offender Registry Laws
Sequential Referral: None
Recommended Referral: None

S.B. **527** Emergency Traffic Ordinances
Sequential Referral: None
Recommended Referral: None

S.B. **637** Exp. Assault of Schl. Prsnl & Vols.
Sequential Referral: None
Recommended Referral: None

S.B. **773** Clarify Annexation Remand.
Sequential Referral: None
Recommended Referral: None

S.B. **800** En Banc Procedure
Sequential Referral: None
Recommended Referral: None

S.B. **885** State Auditor Records Access
Sequential Referral: None
Recommended Referral: None

S.B. **888** Drug Law Amendments
Sequential Referral: None
Recommended Referral: None

S.B. **915** Tobacco Reserve Fund/Nonparticipating Mfg.
Sequential Referral: None
Recommended Referral: None

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

S.B. **34** Emer. Shelter/Health Facil. Immunity

Draft Number:	PCS 1716
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **370** OSHA Witness Statements

Draft Number:	PCS 7667
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **761** Update Corporate Conveyancing

Draft Number:	PCS 2746
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **789** Charitable Nonprofit Notice

Draft Number:	PCS 4681
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 12

Committee Clerk Comment: Will have Sen. Cooper sign

(1)

VISITOR REGISTRATION SHEET

~~Appropriations Subcommittee on Health and Human Services~~ 4-22- , 1999

Name of Committee J — I Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
[illegible]	SOS
[illegible] Cramer	NCATL
[illegible]	[illegible] on Alcohol Charlotte Chamber
Walter Price	
Cam Cowie	BPOIHC
Kenan Davidson	
Stuart	
Bill Campbell	TOC
Fran Preston	NCRMA
[illegible]	NKAWA
Barbara A Mantz	Gov Institute on Alcohol & Subs Ab
[illegible]	NC Poultry Assn
[illegible]	Brooks, Pierce
Michelle Cook	Weyerhaeuser
[illegible]	NCALE
James A. Wicker	Wicker Mato Inc.
Marvin R. Waters	ABC Commission
Jerry Fulton	ABC Commission
[illegible]	Gov. Institute on Alcohol/Sub Abuse
John Watters	N.C. Attorney General's Office
Dennis Patterson	AP
[illegible]	MGNS
[illegible]	NCA Chief Police
Melissa Lovell	DOJ
[illegible]	WCCBT
[illegible]	Kilpatrick Stockton
[illegible]	Intern
[illegible]	SSI
[illegible]	League of Women Voters NC
Marian Dodd	

(2)

VISITOR REGISTRATION SHEET

4-22

~~Appropriations Subcommittee on Health and Human Services~~ , 1999

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff VAN Dyke	Bell South
Bernard Allen	DOS
Bryan Beatty	DOJ
Sandy Sands	WCSR
Rob Hillman	OSA
Kevin Dilthey II	Gov's Office
Scott Hamadl	NCAFL
Joyce Peters	
Adam Searing	NCAJE
Patsy Young	ACLU / APBCNC
Kelli Kukura	DuPont
Jack Lo	WCSR
Jennis Morrison	NC Initiative to Reduce Underage Drinking
Ron Aycock	NC Assoc. of County Comm.
J Bowles	NCFSA
Helen Carpenter	Senate
Stacy Flannery	NC HCFA

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 26, 1999

The Senate Judiciary I Committee met on April 26, 1999 at 4:00 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Hoyle to explain **Senate Bill 1009 - AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.**

Senator Hoyle moved to adopt a Proposed Committee Substitute for Senate Bill 1009 for discussion. The motion carried by a majority voice vote.

Senator Hoyle moved to amend the Proposed Committee Substitute on Page 1, Line 13; Page 2, Line 3; Page 2, Line 4; Page 2, Line 5 and Page 2, Line 6. The motion carried by a majority voice vote. (Amendment attached.)

Walker Reagan, Committee Counsel, was recognized to explain the amendment.

Senator Hartsell moved to give the Proposed Committee Substitute to Senate Bill 1009 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Wellons was recognized to explain **Senate Bill 901 - AN ACT TO REVISE THE LAW GOVERNING THE TIME OF APPOINTMENT OF COUNSEL FOR JUVENILES CHARGED WITH CERTAIN OFFENSES.**

Senator Hartsell moved to give Senate Bill 901 a favorable report. The motion carried by a majority voice vote.

Senator Cooper gave an introduction to **Senate Bill 1149 - 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, AND TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BANKERS AND LENDERS.**

After the Committee was shown a video relating to the bill, Mike Easley, N. C. Attorney General, was recognized to speak on the bill.

The following people were recognized to speak on the bill:

Rev. Thomas Walker – Rocky Mount, N. C.
Andrea Harris – President of the N. C. Institute for Minority Economic Development
Andul Rashid
Gina Pettis Dean – Youth & College Division – NAACP
Rev. George Allison – NAACP
Paul Stock – N. C. Bankers Association
Fred Yates – Mayor, Windfall, N. C.
Rhonda Raney – President of N. C. Community Development
Kaye Gantt – N. C. Minority Support Center
Yvonne Smith – Mortgage Broker/Lender
Larry Bewley – N. C. Financial Services Association
Greg Kilpatrick – N. C. Habitat for Humanity
Stella Adams – N. C. Fair Housing Center
Brent Naylor – Mortgage Broker
Thomas Hilliard – Creative Financing
Janet Whitaker – Pinnacle Lending

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 1149 for discussion. The motion carried by a majority voice vote.

Senator Cooper announced that this bill would be brought back to the Committee to continue the discussion at a later date.

Senator Rand was recognized to explain **Senate Bill 1068 – AN ACT TO AUTHORIZE LOCAL LAW ENFORCEMENT AGENCIES TO ACCESS THE CRIMINAL INFORMATION NETWORK TO RUN CRIMINAL BACKGROUND CHECKS ON VOLUNTEERS FOR THE MCGRUFF HOUSES PROGRAM.**

Senator Hartsell moved to give Senate Bill 1068 a favorable report. The motion carried by a majority voice vote.

Senator Soles, Acting Chairman, recognized Senator Cooper to explain **Senate Bill 1011 – AN ACT TO PROVIDE THAT AN ENHANCED CRIMINAL PENALTY SHALL BE IMPOSED ON A PERSON WHO POSSESSES A BULLET-PROOF VEST WHILE COMMITTING A FELONY.**

Eddie Caldwell, Lobbyist for the N. C. Sheriffs' Association, and Joseph Lee, Legal Counsel to Senator Cooper, were recognized to answer questions from the Committee.

Senator Gulley moved to amend the bill on Page 1, Line 11. The motion carried by a majority voice vote. (Amendment attached.)

Senator Albertson moved to give Senate Bill 1011 a favorable report as amended and roll it into a Committee Substitute. The motion carried by a majority voice vote.

Senator Cooper recognized Senator Ballance to explain **Senate Bill 292 – AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE CALENDARED PURSUANT TO CRIMINAL CASE DOCKETING PLANS DEVELOPED FOR EACH DISTRICT.**

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 292 for discussion. The motion carried by a majority voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 3, Line 14 and Page 2, Line 29. The motion carried by a majority voice vote. (Amendment attached.)

Senator Lucas moved to give the Proposed Committee Substitute to Senate Bill 292 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

REVISED

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Monday, April 26, 1999
TIME: 4:00 P.M. - 5:30 P.M.
ROOM: 1027

The following bills or resolutions will be considered:

SB 292	Sup. Ct. Criminal Case Docketing Plan	Ballance
SB 838	Compensate for Erroneous Conviction	Wellons
SB 897	Safety Professionals	Dalton
SB 901	Appointment of Juvenile Counsel	Wellons
SB 1009	Journalists' Testimonial Privilege	Hoyle
SB 1011	Bullet Proof Vest/Commit Felony	Cooper
SB 1065	Amend Impeachment Evidence Rule	Rand
SB 1068	McGruff Criminal Background Checks	Rand
SB 1149	Prohibit Predatory Lending	Cooper
SB 1154	Amend Assault Inflict Serious Injury	Rand

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 26, 1999

SB 292	Sup. Ct. Criminal Case Docketing Plan	Ballance
SB 897	Safety Professionals	Dalton
SB 901	Appointment of Juvenile Counsel	Wellons
SB 1009	Journalists' Testimonial Privilege	Hoyle
SB 1011	Bullet Proof Vest/Commit Felony	Cooper
SB 1065	Amend Impeachment Evidence Rule	Rand
SB 1068	McGruff Criminal Background Checks	Rand
SB 1149	Prohibit Predatory Lending	Cooper
SB 1154	Amend Assault Inflict Serious Injury	Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1009

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors: Senators Hoyle; Ballantine, Dalton, East, Kerr, Lee, Soles, and Webster.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Persons, companies, or other entities engaged in gathering or dissemination of news.**

(a) Definitions. The following definitions apply in this section:

(1) Journalist. -- Any person, company, or entity engaged in gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. -- Any grand jury proceeding or investigation; any criminal prosecution, civil suit, or related proceeding in any court; and, any judicial or quasi-judicial proceeding before any administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. -- Any entity regularly engaged in the publication or distribution of news via printed or electronic means.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is highly relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production."

Section 2. This act is effective when it becomes law and applies to all actions and proceedings pending in the courts of this State on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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PROPOSED COMMITTEE SUBSTITUTE
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Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors:

Referred to:

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(a) Definitions. The following definitions apply in this section:

(1) Journalist. -- Any company or entity, or the employees or agents of that company or entity, engaged in the business of gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. -- Any grand jury proceeding or investigation; any criminal prosecution, civil suit, or related proceeding in any court; and, any judicial or quasi-judicial proceeding before any

administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. -- Any entity primarily engaged in the business of publication or distribution of general news via general circulation print, broadcast, or other electronic means.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

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WHY A SHIELD LAW IS NEEDED IN NORTH CAROLINA

North Carolina's proposed shield law, or journalists' testimonial privilege, brings North Carolina in line with the laws of 30 other states and the District of Columbia. The law does not change existing state law. As proposed, the statute codifies state constitutional and common law and ensures that North Carolina's laws are consistent with judicial decisions of the state and federal courts.

Codification of the journalists' privilege will have the following beneficial effects for the citizens of North Carolina.

- It will ensure the free flow of information to the state's citizens.
- It will prevent government intrusion into newsrooms creating financial burdens on small newspapers.
- It will prevent civil trial attorneys from relying on reporters to provide discovery in cases.
- It will ensure that North Carolina law is consistent with federal law, discouraging forum shopping and the inconsistent administration of justice.

Codification will not:

- Prevent lawyers from obtaining relevant and necessary information in both civil and criminal cases.
- Provide the media with any unfair advantage in a defamation law suit.

1. Source of the Privilege

The journalists' privilege in this state is rooted in the First Amendment to the United States Constitution and in Article 1, Section 14 of the North Carolina Constitution. In *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972), the United States Supreme Court recognized a qualified privilege for reporters grounded in the First Amendment. In doing so, the Court stated "without some protection for seeking out the news, freedom of the press could be eviscerated." *See also Chappell v. Brunswick* Board of Education, 9 Med. L. Rptr. 1753 (N.C. Super. Ct. Brunswick Cty. 1983) (recognizing journalists' privilege under the U.S. and North Carolina Constitutions).

The privilege is afforded journalists as a way of ensuring that information flows to the people so that they may be fully informed on events that affect their lives and decisions made by their leaders for their benefit. Without the free flow of information, citizens will not be able to participate in the democracy.

It is important to recognize that journalists are at the center of current events. In covering the news of any community, they receive information that will often be the subject of a judicial proceeding. Without a qualified privilege, journalists become favored witnesses of civil attorneys who believe they can use journalists as a easy way to discover relevant information without undertaking the necessary initial effort.

Courts and commentators recognize five adverse effects that arise when journalists are forced to testify:

First, sources of information – both confidential and nonconfidential – express their reluctance to talk to journalists when there is a risk that those communications will be used in a judicial proceeding.

Second, journalists lose their neutral position in the eyes of the public when they are forced to testify for one litigant or another. They become "tools" of the state or defense.

Third, the litigant intrudes into the editorial process when he seeks to discover unpublished information. When journalists are deposed, they are subject to questions that go into their news judgments rather than the facts of a particular case, causing a significant chill to reporters engaged in the editorial process.

Fourth, there is a financial burden on news organizations that arises from unabridged discovery. The news organization loses the use of that reporter for the trial proceeding or deposition. This can be devastating for small news organizations. There is also a significant cost in legal resources to defend against multiple subpoenas.

Finally, discovery causes reporters to disclose the fruits of their labor. The information a journalist receives – published and unpublished – is the reporter's "stock and trade." Subpoenas that seek this information deprive the news organization of the benefits of their capital investment.

See 1997 "Agents of Discovery: A Report on the Incidence of Subpoenas Served on the News Media in 1997." The Reporters Committee for Freedom of the Press.

2. Journalists' Privilege Under Federal Law

The federal courts in North Carolina recognized a journalist's privilege for confidential and nonconfidential information. While the development of the journalists' privilege began by shielding journalists from the necessity of revealing confidential sources, it protects nonconfidential information as well. *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 951 F. Supp. 1211 (M.D.N.C. 1996). As the United

States District Court for the Western District of North Carolina has observed, "[t]he compelled production of a reporter's resource materials can constitute a significant intrusion into the newsgathering and editorial processes." *Miller v. Mecklenburg County*, 602 F. Supp. 675 (W.D.N.C. 1985). The privilege recognized by courts is qualified privilege. That means litigants can obtain the needed information if the interests of justice require the compelled discovery of that information. In all cases where a reporter asserts the privilege, there is a three -part test : (1) whether the information sought is relevant; (2) whether there is a compelling need for the information; and (3) whether the party seeking the information has exhausted other possible sources of the information before seeking to compel the material from the reporter. *Penland v. Long*, 922 F. Supp. 1080, 1084 (W.D.N.C. 1995); *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 24 Med. L. Rptr. 2431, 2432-22. *See Miller*, 602 F.Supp. at 679.

In *Miller*, the court also weighed the public's interest in having the press free to investigate stories without being compelled to disclose the sources for the information. It stated: "The public has a paramount interest in having a free flow of information, and this flow may be constricted when reporters are forced to disclose a confidential source or unpublished material received from that source." *Miller*, 602 F. Supp. at 679-80.

The United States Court of Appeals for the Fourth Circuit, the circuit in which North Carolina sits, has also adopted this three-part test to determine if information obtained by a reporter while gathering news can be compelled. *See LaRouche v. NBC*, 780 F.2d 1134 (4th Cir.), *cert. denied*, 479 U.S. 818, 107 S. Ct. 70, 93 L.Ed. 2d 34 (1986); *Church of Scientology Int'l v. Daniels*, 992 F.2d 1329 (4th Cir.), *cert. denied*, 510 U.S. 869, 114 S.Ct. 195, 126 L.Ed. 2d 153 (1993).

3. Journalists' Privilege Under State Law

North Carolina's courts have long recognized the journalists' privilege. In *Chappell v. Brunswick Board of Education*, 9 Med. L. Rptr. 1753 (N.C. Super. Ct. Brunswick Cty. 1983), for example, the court quashed the plaintiff's subpoena duces tecum commanding a reporter to appear with her notes, files and records for a deposition. The reporter had interviewed a Board of Education member to write an article about the non-renewal of the plaintiff's teaching contract. The court held that the U.S. and North Carolina Constitutions afford reporters a qualified privilege to refuse to testify or produce documents, regardless of whether or not the information is confidential. The court applied a three-part test, similar to that applied by the federal courts. Other North Carolina courts have also applied this test. *See, e.g., North Carolina v. Demery*, 23 Med. L. Rptr. 1958 (N.C. Super. Ct. Robeson Cty. 1995); *North Carolina v. Wallace*, 23 Med. L. Rptr. 1473 (N.C. Super. Ct. Mecklenburg Cty. 1995).

In *North Carolina v. Smith*, 13 Med. L. Rptr. 1940 (N.C. Super. Ct. Buncombe Cty. 1987) the court also quashed a subpoena based on the journalists' privilege. There, a reporter interviewed a former District Attorney for a story on theft of narcotics and the defendant in a criminal case sought the reporter's testimony. The court held that defendant had failed to overcome the federal and state constitutional privileges because the information sought, though relevant, was neither essential to defendant's case nor unobtainable elsewhere.

Similarly, in *North Carolina v. Wallace*, 23 Med. L. Rptr. 1473 (N.C. Super. Ct. Mecklenburg Cty. 1995) a defendant accused of ten murders sought to subpoena newspaper and broadcast reporters to determine if their sources were police officials. Defendant was seeking a change of venue, claiming that pretrial publicity had prejudiced prospective jurors and that police officials were the source of the adverse publicity. The court held that the defendant failed to satisfy the requirement that the information is highly relevant and essential because the reporters' testimony would be merely cumulative to evidence already presented.

Courts in many other North Carolina cases have recognized the journalists' privilege and relied upon it in quashing subpoenas served upon reporters and news organizations. *See, e.g., Locklear v. Waccamaw Siouan Development Ass'n*, 12 Med. L. Rptr. 2391 (N.C. Gen. Ct. 1986) (quashing subpoena directed to newspaper reporter in civil case for failure to demonstrate the information sought was not available from alternate sources); *North Carolina v. Hagaman*, 9 Med. L. Rptr. 2525 (N.C. Super. Ct. 1983) (quashing subpoena issued to reporter in murder case); *North Carolina v. Rogers*, 9 Med. L. Rptr. 1254 (N.C. Super. Ct. 1983) (quashing subpoena seeking testimony of reporter in criminal case).

Recently, one North Carolina court refused to recognize a qualified privilege of reporters to be free from compelled testimony, at least with respect to nonconfidential information from nonconfidential sources. *See In re Sarah Lynn Owens*, 496 S.E.2d 592 (N.C. Ct. App. 1998). The case, however, is contrary to the vast majority of state and federal cases, which have recognized the privilege under the state and federal constitutions, and it illustrates the need for a statutory privilege.

4. The Proposed Statutory Privilege Is Consistent With North Carolina Case Law

Under the proposed statutory privilege, journalists will be protected from compelled disclosure of confidential informants and confidential information obtained by a journalist while actively gathering or compiling news.

In addition, a qualified privilege will apply to nonconfidential information obtained or prepared by journalists. Under the qualified privilege, a journalist will

be compelled to disclose information if the person seeking the information establishes that the information: (a) is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought; (b) cannot be obtained from alternate sources; and (c) is critical or necessary to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought. Also, courts must hold a hearing and include clear and specific findings under the three-part test before issuing an order to compel testimony or production. The qualified privilege as proposed and the three-part test to overcome it is consistent with federal and state court cases in North Carolina.

5. Conclusion

If the statutory journalists' privilege is enacted, it will bring North Carolina into the majority of states, which have passed shield laws. The majority of shield laws that have been passed have similar or broader provisions to protect information obtained by journalists while gathering news from compelled disclosure.

A statutory privilege should help to minimize the number of subpoenas issued to journalists and allow them to concentrate on gathering and reporting the news. In addition, codification of the journalists' privilege will diminish the threat to sources of potentially newsworthy information of having their identities and information later disclosed in a legal proceeding. The result will be to preserve an independent press and the free flow of information to the citizens of North Carolina.

LIMITED STATUTORY PROTECTION AGAINST SUBPONEAS TO NEWS MEDIA

Purpose: The NCPA shield legislation provides qualified protection for the media's newsgathering information. The bill makes the media a secondary source—rather than a primary source—for those seeking information for use in court. The bill is designed to diminish the burden of subpoenas on the news media by 1) codifying the media's constitutional right under the First Amendment and the NC Constitution against being forced to testify concerning information gathered for distribution to readers and viewers, and 2) clarifying the rules by which people might acquire this information. This is not a special interest bill, but will protect the public's right to information it obtains through the news media.

What the law has been: For 30 years, judge-made law in NC protected the media's right against being forced to testify, unless a party shows the following in court:

A. The information is relevant and material;
B. There is compelling need for the information; and
C. The information cannot be obtained from other sources

What recently happened to this protection: In a February 1998 ruling that is at odds with law in 47 other states, the NC Court of Appeals threatens to end the news media's protection from being forced to testify.

Yet the federal courts continue to recognize the media's right to be protected against forced disclosure of their newsgathering information: The settled law of the federal circuit in which NC sits is that people may not subpoena the news media for information unless the three-part test (outlined above) is met.

What the proposed statute does: This qualified protection against subpoenas bill would bring NC into conformity with the vast majority of other states (30 of which have a virtually identical statute) and the federal courts in this circuit. Under this bill, people can obtain newsgathering information in some instances by meeting the three—part test that has been the law in NC for 30 years.

TALKING POINTS:

1. Senate Bill 1009 provides qualified protection for journalists' newsgathering information. The bill makes journalists a secondary source – rather than a primary source – for those seeking information for use in court. The bill is designed to diminish the burden of subpoenas on the news media and, in turn, ensure the free flow of information to the public

2. Under this bill, people can obtain newsgathering information from journalists by showing that the information is highly relevant; that the information cannot reasonably be obtained from alternative sources; and that the information is essential to proving the claim, charge, or defense made by the party seeking the information.

3. This bill makes North Carolina state law consistent with the law protecting reporters from subpoenas in the North Carolina federal courts and with the law that exists in 47 states. Thirty states, the District of Columbia, and Guam have statutes that protect journalists' information.

4. This bill would simply restore the protection afforded journalists' information by North Carolina courts for 30 years (until a February 1998 decision by the NC Court of Appeals).

Gene Price

Protect the wrongdoers?

Trust is the hallmark of the reporter. Without it, nothing he or she produces, no matter how well written, is of value.

And trust goes far deeper than the final product.

It is the genesis of the reporter's ability to get the facts that go into the final story — the day's news.

I have spent more than 50 years in the trenches of journalism. It has been my privilege to break some stories of statewide and national interest.

A key element in virtually all the "big" stories was that someone felt comfortable in sharing with me — in confidence — some basic background information.

Providers of that information have not been sinister, self-serving or vindictive tipsters lurking in dark alleys.

To the contrary, in years past they have ranged all the way up to the highest public officeholder in the state — and to the state's highest law enforcement official.

They shared with me information they could not have provided without complete confidence that they would never be identified as my sources.

Their sole motivation for sharing the information was the public interest. And because I was able to break the stories, the public interest was, indeed, served.

These experiences from the past came to mind recently as I read of the efforts of State Sen. David Hoyle to provide North Carolina's journalists, within some reasonable limits, the legal right to protect their confidential news sources.

Federal courts across the land have respected that right. And it is provided by law in 48 states. In our own state, for decades, it was the rule if not the written law — until last year.

A three-judge appellate court panel ruled that there could be no such protection.

Sen. Hoyle has introduced a bill that would restore that right, with some qualifications. The court could require revelation of sources and information if: 1) the information is relevant and material; 2) there is a compelling need for the information; and 3) the information cannot be obtained from other sources.

There apparently is reticence on the part of some prosecutors to see such a law passed. Perhaps some like the idea of being able to possibly rely more on the efforts and skills of investigative reporters than on their own resources.

> There might be cases where that is justified. But the exceptions appear to speak to such situations.
>
> And prosecutors might also reflect on what might also happen in the absence of a law protecting informants. The high courts for years have come down on the side of accused criminals. Could absence of a shield law lead to denying CrimeStoppers around the country the opportunity to promise informants that *their* identities will be protected?

The silencing of sources of information would have a disastrous effect on law enforcement, just as it would have on investigative journalism.

Without some element of protection, no longer can even the most credible people share confidential information with any conviction that their identities will not be revealed.

Without the confidentiality shield law, the protection against exposure is shifted to those who, behind the scenes, are stealing, accepting pay-offs, falsifying records and engaging in all manner of corruption.

The real issue in Sen. Hoye's bill is: For whom will protection be provided — the lawbreaker or the law-abiding citizen?

Goldsboro News-Argus

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ESTABLISHED 1885

April 16, 1999

Senator Marc Basnight
Room 2007
Legislative Building
Raleigh, NC 27601

Dear Marc:

I am enclosing for your interest a copy of my page one column which will appear Monday, April 19. Hopefully, it states my case for Senator Hoyle's "shield law" bill.

Several years ago, a governor and an attorney general — both personal friends of yours and mine — gave me in confidence a full SBI report on terrible things that had been going on at a public institution.

No criminal indictments were forthcoming, hence, the SBI report never could be released *legally*. But both the governor and the AG felt strongly that the information needed to be made public and knew they could trust me to get the story printed and on the wire services and still protect them.

Strict confidentiality also was essential in stories I developed involving skulduggery on the part of three judges — one of whom was kicked out and the other two censured by the Supreme Court. And in revealing a series of embezzlements on the part of a Goldsboro tax collector.

I feel Senator Hoyle's bill is more important than even some of my colleagues in the "media" realize.

Sincerely,

Gene Price

GP:ll
Enc.

cc: John Kerr, Phil Baddour, Senator Hoyle, Senator Tony Rand, Senator Beverely Pardue

(over)

This newspaper is dedicated to being an indispensable source of information and entertainment in our community while promoting the spirit of freedom.

A Freedom Newspaper

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Billy Moore / Advertising Director
Frances Jones / Circulation Director
Richard Wagner / Editor
Cynthia Coleman / Business Director
Larry Powell / Production Director

Editorial

True or false: North Carolina needs shield law

Put away your cup of coffee. Pick up your pencil. Time for a pop quiz.

Answer the following questions. True or false:

1. T ___ F ___ We live in a perfect world.
2. T ___ F ___ Government officials can always be counted on to do the right thing — and you would bet your life on it.
3. T ___ F ___ You or your children have never been wronged at work, school or in your personal business dealings.
4. T ___ F ___ Your local, state and federal governments are run efficiently and never waste taxpayers' money.
5. T ___ F ___ You don't pay enough taxes, and you would like to pay more.
6. T ___ F ___ There never was a Holocaust.
7. T ___ F ___ Police never abuse their power - and you'd bet your life on it.
8. T ___ F ___ Richard Nixon was a fine, upstanding president.
9. T ___ F ___ Bill Clinton never lies.
10. T ___ F ___ You know of wrongdoing and you have proof of it — but you don't say anything because you don't want to lose your job or attract attention to yourself.

Time's up.

How did you do? If you marked the first nine questions "true", then you lead a blessed life, indeed. If you marked the first nine questions "false", reality has left its mark on you. But, if you marked No. 10 "true", we would like to help you. Maybe not right now, though.

Maybe never.

It all depends on what the North Carolina General Assembly does this week. The North Carolina Press Association has embarked on a major effort in the Assembly to have legislators pass a "shield law", which would provide protection for journalists in their newsgathering activities. Such a law would enable the press — the only watchdog free of government control —

Without the law, however, journalists could be hauled into court at anytime and by anyone in government who wants to know what the media knows — and who gave us the information. Until recently, courts in North Carolina had protected journalists from such government intrusion. But a recent decision by an appeals court and inaction by the State Supreme Court have left the legislative route the only alternative for the media.

Journalists across America are jailed frequently because they refuse to divulge their information or their sources. They don't withhold their notes or refuse to divulge a source's identity because they seek fame or martyrdom. They do it for the sake of freedom, for the public.

The N.C. Senate Judiciary Committee and the House Judiciary Committee each are considering separate bills that would protect journalists' right to practice their trade. Monday is D-Day. The committees are expected to make their decisions then. The bills will either die, or they will be passed to the House and Senate floors for final votes.

If you believe this is a perfect world, we hope you enjoy your coffee and pray you will be allowed to continue to live a long, idyllic life. If you feel otherwise, then we suggest you call or e-mail your legislator.

Otherwise, don't expect journalists to go to bat for you should you ever be wronged — or to be willing to spend time in jail to protect your rights and confidentiality.

Contact your legislators

Sen. Ed Warren, D-9th; Phone: (919) 733-5953 (W), (252) 756-2671 (H); E-mail: Edw@ms.ncga.state.nc.us

Sen. Charles Albertson, D-5th; Phone: (919) 733-5705 (W), (910) 298-4923 (H); E-mail: Charliea@ms.ncga.state.nc.us

Sen. Luther Jordan, D-7th; Phone: (919) 715-3034 (W), (910) 763-2441 (H); E-mail: Lutherj@ms.ncga.state.nc.us

Sen. John Kerr, III, D-8th; (919) 733-5621 (W), (919) 734-2910 (H); E-mail: johnk@ms.ncga.state.nc.us

Rep. Carolyn Russell, R-77th; Phone: (919) 715-0873 (W), (919) 736-2665 (H); E-mail: Carolyr@ms.ncga.state.nc.us

Rep. Philip Baddour, Jr., D-11th; Phone: (919) 715-0850 (W), (919) 734-3917; E-mail: Philb@ms.ncga.state.nc.us

Rep. Jerry Braswell, D-97th; Phone: (919) 715-3001 (W), (919) 731-2750; E-mail: Jerrybr@ms.ncga.state.nc.us

Rep. Russell Tucker, D-10th; Phone: (919) 715-3015 (W), (252) 568-3295 (H); E-mail: Russellt@ms.ncga.state.nc.us

Last year, when UNC Police Lt. Ed Swain was in a legal battle with the university over his ticketing of a trustee's daughter, the state sought to subpoena a Chapel Hill News reporter to testify against Swain.

The Attorney General's Office reasoned that the reporter could verify UNC's assertion that Swain had met with reporters while on police duty. He had been fired for claiming work time and pay for the period of time he had spent at The Chapel Hill News office. The offense was a patently technical infraction concocted by Swain's bosses to obscure the real reason for his firing – the officer's audacity in ticketing a trustee's daughter for underage drinking at a UNC football game, and then complaining to the press that UNC tried to cover up the ticket.

The newspaper talked the state attorneys out of subpoenaing the reporter. We were able to make the case that the Constitution, federal and state, protects journalists from being forced to testify in court about information obtained in the course of routine news-gathering.

Since then, that protection has been dangerously eroded by the state Court of Appeals, which last year reversed long-standing judicial policy and ruled that reporters could be compelled to turn over their notes to prosecutors and testify in court about sources for their stories. The decision has been appealed to the N.C. Supreme Court, which so far has not issued an opinion.

Alarmed at the loss of protection, the state's newspapers and television stations have asked the General Assembly to enact a "shield law" that would protect reporters from being forced to testify about their stories and sources, except under specified conditions. The bill is to be considered this week in the state Senate and House.

It might be asked: Why should journalists have such a special legal privilege, when ordinary citizens can be compelled to testify when they've seen a crime committed? After all, without such subpoena power to make unwilling witnesses testify, law enforcement authorities would be hampered in their ability to convict criminals and defense attorneys in defending innocent clients.

The simple answer is that reporters are not ordinary citizens when they're on the job. They are professionals who gather information in the course of their work, in order to publish news about the communities they cover. If reporters were not protected by a legal privilege in court, prosecutors and defense attorneys could use the media as an investigative arm, summoning reporters at will to disclose their notes and sources of information used in reporting a story.

Again, what's wrong with that? The potential is to dry up the flow of information, especially about sensitive issues, to reporters and by extension to the community. Imagine how willing a person who possessed confidential information would be to talk to a reporter if

in court, would be denied a free flow of information about the workings of their government. If whistleblowers in the Swain incident hadn't felt they could trust reporters to protect their confidence, you can be sure that the trustee ticketing episode never would have seen the light of day.

The proposed shield law would not be a blanket protection. Prosecutors still could call reporters to testify if they could prove that the information couldn't be obtained any other way and was essential to their case. Thirty other states already have such laws, and federal courts, including those in North Carolina, recognize the media's right to be protected against forced disclosure of newsgathering information.

The Senate and House should act expeditiously to ensure such basic guarantees in North Carolina's courts as well.

Flow of information essential to freedom

The Daily News, Jacksonville, N.C.; April 21, 1999

Freedom of the press isn't reserved for those who ply journalism as a trade. It isn't a right assigned exclusively to publishers and editors, reporters and broadcasters.

The framers of the state and federal constitutions had a much greater purpose in mind when they gave free press and free speech prominence in those documents. They were concerned with the rights of all people and the future of democracy. They understood that unregulated information was essential to a free society.

The media actually can operate without freedom; it just doesn't operate very well or serve any legitimate purpose. For proof, look at the state-controlled machines that churn out propaganda for autocracies worldwide.

Our approach to journalism is remarkably different. It isn't always tidy, and it certainly isn't always fair, but a free press has served this nation well for more than 200 years.

Americans frequently object to the media's conduct, with good reason, but still put a lot of faith in the press's ability to gather the news. They recognize that the freedom of the press actually is their freedom.

When properly fulfilling their watchdog roles, the news media provide a line of defense against various forms of government abuse. If the press isn't allowed to operate outside the realm of government, all forms of liberty are placed in jeopardy.

That is why the nation's Founding Fathers included a guarantee of press freedom in the First Amendment. It is reason Article 1, Section 14, of the N.C. Constitution reads, "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained...."

An important battle to maintain the free flow of information is under way in the General Assembly. Both the state House and Senate are considering legislation that would allow journalists to maintain their integrity and objectivity when dealing with confidential information.

Under a bill introduced by Sen. David Hoyle, D-Gaston — and co-sponsored by two area legislators, Sen. Beverly Perdue; D-Craven; and Sen. Patrick Ballentine, R-New Hanover — reporters could be forced to testify in court cases under certain conditions.

To force a bona fide journalist to testify or disclose information, attorneys would have to show:

- The information is relevant and material to the case.
- There is a compelling need for the information.
- The information cannot be obtained from other sources.

Those straightforward requirements for overcoming what traditionally has been honored as a reporter's privilege do not represent a threat to the equilibrium between government and the so-called fourth estate.

Depending on the resolutions of ongoing court cases, however, failure to enact the guidelines could cut off the information that a free society requires.

Uncovering government malfeasance and delving into the complexities of many important news stories often require use of confidential sources and information. It's a natural part of an important calling. If they are to maintain any chance of success, reporters must be able to approach their work with reasonable protection from the whims of a vindictive or just plain lazy lawyer in a future court case.

Actually, the greatest danger isn't to journalists. The people most at risk would be the ones who are brave enough to step forward to expose wrongdoing. When cases go to court, they will be the real targets; reporters will only be obstacles.

Opponents of this legislation would like to project it as a "press bill." The same arguments arise when efforts are made to strengthen open-government laws.

It's really a "people's bill." The legislation offers special protection not to a profession but to an ideal. It attaches the same importance to the free flow of information as the authors of our constitutions did.

This issue should be decided by the courts, but various judicial decisions have eroded our constitutional protections in recent years. Taking nothing for granted, our legislators should stand in defense of freedom of the press in the way their forebears once did.

[redacted] Wednesday, April 21, 1999 10:31:36 AM
NC Bureau Item

From: Patrick Holmes

Subject: Shield law editorial

To: NC Bureau

BURLINGTON

Following is Don Bolden's editorial in support of shield law legislation, which ran in the Times-News on Monday.

Shield law will make
Freedom more secure

Currently there are two cases under appeal in North Carolina regarding freedom of the press issues, and the outcome could have a major impact on the future flow of information through news channels to the reading public.
In one of the cases, a Wake County judge ordered a television reporter to testify regarding a confidential source, and in the other, a reporter for the Raleigh News & Observer was ordered to produce his notes regarding an interview with a defendant charged in a murder and sexual assault case.
Both those cases have proceeded to the North Carolina Supreme Court which has yet to rule on either.
As a result of these cases, legislation has been introduced in the North Carolina General Assembly to shield journalists from revealing their sources or from testifying in court,
Two bills have been introduced _ one by Sen. David Hoyle, D-Gaston, and the other oby Rep. George Miller, D-Durham. In giving a reason for his bill, Mr. Miller said ``The role of the media is a valuable one. He said his act would give ``very minimal" protection for journalists.
Under Mr. Hoyle's bill, a journalist would not be required to testify about confidential or non-confidential information unless attorneys could show in court that the information is relevant and material, that there is a compelling need for that information and that the information could not be obtained form other sources.
Mr. Miller's bill goes a step further in that it would offer a blanket shield against requiring a journalist to give the identify of a confidential informant or any information obtained from a confidential source.
John Bussian, an attorney who is lobbyist for the North Carolina Press Association, urged approval of a shield law in view of the two cases currently under appeal. He said the courts in North Carolina have always recognized that the First Amendment and the free press clause in the N. C. constitution give protection to the press from being forced to testify in court in all but the rarest cases.There are those in the legal community who oppose any shield laws for journalists, believing that they should be forced to testify, contending that any valuable information they have should be made available to the courts.
So what's the big deal here? Is a shield law just a way for journalists to avoid court procedures? Hardly. A shield law is not a law for journalists but for the general public. Such a law will assure that the flow of information will continue, that threats from the courts will not stifle the use of confidential informants and confidential materials, and that basic freedom of the press will remain intact. It is the reader of the newspaper who benefits from the information that the reporter uncovers, and should that information be choked off, it is the reader of the newspaper whose freedom suffers.
It is obvious from the two cases in point that North Carolina needs a shield law. And now is the time to approve it. Then what has been practice in North Carolina until these two cases arose will become law, and one of our basic freedoms will be a bit more secure.

Wednesday, April 21, 1999 2:17:29 PM
NC Bureau Item

From: John Pea

Subject: Gazette edit on shield law

To: NC Bureau

Gaston Gazette

Press protection bill good for everyone

Two state lawmakers, including Sen. David Hoyle, D-Gaston, have introduced important bills in the North Carolina General Assembly to protect reporters from revealing their sources and testifying in court.

Hoyle and Rep. George Miller, D-Durham, filed similar "shield law" bills in their respective chambers.

Under Hoyle's bill, a journalist would not be required to testify about confidential or non-confidential information unless attorneys could show in court that the information is:

- Relevant and material to the case
- Compelling enough to be admitted
- Unable to be obtained from other sources

Miller's bill differs from Hoyle's. It would offer a blanket shield against requiring a journalist to disclose the identity of a confidential informant or any information obtained from a confidential source.

It's important to note that these laws protect more than journalists. In essence, they protect the public's right to know.

Important information might never be revealed in the media if sources fear they'll be exposed in court. In many cases, events are brought to light that the public needs to know about -- information they won't get from government.

These lawmakers are to be congratulated for their bravery in taking this stance. They are acting in the best interests of all North Carolina residents.

Hoyle and Miller introduced the bills at the request of the N.C. Press Association.

Two court cases prompted the bill:

-- The first occurred in 1997 in Wake County, when Superior Court Judge Robert L. Farmer ordered television reporter Sarah Owens to testify regarding a confidential source. The N.C. Court of Appeals upheld the order, which is now on appeal before the N.C. Supreme Court.

-- The second occurred in 1998 in Durham County, when Superior Court Judge Orlando Hudson ordered Andrew Curliss, a reporter for the Raleigh News & Observer, to produce his notes regarding an interview with a defendant charged with the murder and sexual assault of a 2-year-old. The newspaper appealed that case directly to the N.C. Supreme Court.

[redacted] Unsent Message

From: Elliott Potter

Subject: Re: Shield law edit

To: Elliott Potter

Cc:

From the Sun-Journal of New Bern:

It can be argued that the media does in fact push too far and stay too long in reporting stories the public believes cross the line from "need to know" to invasion of privacy.

A case can be made to support that conclusion.

Nevertheless, it's the particular media outlet that should then be prepared to answer to a disapproving public, which, by the way, oftentimes craves the coverage.

The public cannot either approve or disapprove if journalists are restricted, in any way, of gathering and disseminating information. What's more, editors, broadcasters and reporters must be free to gather, print and broadcast this information without fear of retribution involving these professionals or their sources.

"Congress shall make no law ... ."

Sound familiar? The First Amendment to the U.S. Constitution is written not to be misunderstood. The public's right to know is paramount in maintaining a free society and a representative government.

It's up to voters and taxpayers to decide when government officials, who often attempt to restrict the flow of information affecting the lives of Americans, have overstepped their bounds.

State lawmakers who strongly believe in this ideal have presented a "shield law" bill that would, in effect, permit journalists to work with confidential sources sans any fear of retribution from our courts system.

The state House and Senate are considering the legislation.

Two state cases, currently under appeal, speak to the need for a "shield law" - introduced by Sen. David Hoyle, D-Gaston and co-sponsored by Sen. Beverly Perdue, D-Craven, and Sen. Patrick Ballentine, R-New Hanover. One of the aforementioned cases involves a reporter for the Raleigh News and Observer who was ordered to hand over notes regarding an interview with a defendant charged with the sexual assault and murder of a 2-year-old. The other involves a television reporter who was ordered to testify regarding a confidential source.

Each case has reached the state Supreme Court. We are awaiting a decision.

These types of cases not only serve to impede a journalist in regard to his quest for information. They effectively choke the news pipeline which feeds the general public.

The new law would, before forcing a journalist to testify, place the burden on attorneys to show the information is relevant to the case, there is a compelling need for the information, and the information cannot be obtained from other sources.

Clear, concise and succinct.

Press freedoms have not in recent years been strengthened by the courts. They have, unfortunately, been weakened.

That's why a shield law is essential to maintaining the freedom we have enjoyed, and from which we have prospered, for 200 years.

From the *Rocky Mount Telegram*, April 24, 1999

A bill now before the General Assembly would codify a key protection for the free press, and deserves both prompt passage by our senators and representatives and the governor's approval. Informally called a "shield law," the bill would generally prevent journalists from being forced to testify or provide other forms of evidence in legal proceedings. Further, it requires that efforts to compel a journalist's cooperation can come only after a hearing has been held.

While not a matter that draws much public attention, the prospect of having to testify in a civil or criminal case or provide notes, photographs, videotape or other items is a grave concern, and even a threat, to a free press. It cuts to the very matter of for whom the press works. The answer is not for law-enforcement agencies, the district attorney or similar public officials who prosecute criminal cases. It is also certainly not for lawyers, insurance agencies and the like who are involved in many civil cases.

The media serve the public as unbiased (when the job is done properly) recorders of the happenings that affect all our lives. To do so requires that those we cover understand that we are not gathering information with the intent of routinely, or even infrequently, providing it to third parties who would oppose them, do them harm or the like. Knowing that a shield law is in place only strengthens the role of the press that was established more than 200 years ago in the opening words of the Bill of Rights.

Yes, there have already been some steps toward ensuring that the press has such protection. Previous court decisions have put some restrictions on compelling journalists to provide evidence. But in a given case today, that is a hit-or-miss sort of security, hanging on the philosophy of the judge.

The bill also isn't a carte blanche for journalists. It still permits a party to force testimony if three specified conditions are met. But before that can be invoked, the bill would require the party involved to thoroughly look elsewhere to see if he can obtain the information from another source.

The bill is now before the Senate Judiciary I Committee. Hearings will have to be held on it, of course. Forces who would oppose a strong and free press, most notably, we suspect, those who have been caught in the media spotlight for some unsavory act they have committed, will line up against the bill. They can and should have their say, but we can see no reason why senators should not move forward with the proposal. With the deadline approaching for bills to be sent to the House, this proposal should get quick votes of approval in both the Senate committee and on the chamber's floor. The House should concur as quickly, and the plan should soon be sent to Gov. Jim Hunt for his signature.

Editorial from *The Dispatch*, Lexington

Legislation that is very important, especially to readers of all newspapers in North Carolina, is to be voted on in a state Senate committee Monday afternoon. Assuming it passes, it probably will be sent to the full Senate for action.

A companion measure, with a little different wording, is in a state House committee that held a hearing on the bill Friday, and will probably vote on it next week.

The legislation would allow journalists to keep secret the identity of confidential sources in several circumstances.

That means if you had information of wrongdoing in your government, for instance, but couldn't expose yourself as the whistleblower, you would be protected when the newspaper reporter pledged confidentiality to you.

That's the way it is in 47 other states.

It always has been assumed that you and the reporter had that protection in North Carolina too. After all, the state constitution reads: "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained."

Judges have consistently ruled over the years that journalists couldn't be forced to testify in court unless the information is relevant and material, there is a compelling need for the information and the information cannot be obtained from other sources. It has come to be known in legal circles as the three-part test.

Federal courts also recognize the right of journalists and their sources to be protected under similar circumstances.

But two cases are now before the N.C. Supreme Court that could change things considerably. A television reporter in Wake County was ordered by a Superior Court judge to reveal the identity of a confidential source n 1997. A three-judge N.C. Court of Appeals panel ruled against the reporter and the case is on appeal.

A year later, in Durham County, a newspaper reporter was ordered by a Superior Court judge to produce all of his notes regarding a jailhouse interview with a defendant.

Prosecutors want to use an impartial reporter as an investigator for the state instead of doing their own work. That went to the Supreme Court on direct appeal.

The bills filed by Sen. David Hoyle, D-Gaston, and Rep. George Miller, D-Durham, protect your right to continue to know information that you expect to learn through the news media.

If that protection ceases to exist in this state, it will have a chilling effect on newsgathering. Sources will be reluctant to do the honorable thing and give journalists information about wrongdoing. He or she would know the journalist couldn't guarantee secrecy because the courts could legally demand the identity be revealed.

Journalists would, of course, have to testify about any crime they witnessed – just as every citizen does. But if sources can't be protected, you will lose and lawbreakers will win.

Herald-Sun, Durham

Balkans will end. We can only hope the end will be more fortuitous than the beginning.

MEDIA SHIELD LAW

North Carolina needs one

Should reporters be forced to testify in criminal or civil proceedings concerning information they have gathered for news stories? Federal courts have held that reporters can only be so compelled when the information meets very specific qualifications and is crucial to the case. For 30 years, North Carolina courts have followed similar practice.

Now this sound, respected practice is being challenged. In a February 1998 decision, the N.C. Court of Appeals ruled that reporters do not have a qualified privilege to refuse to testify. The court's ruling came when it upheld a lower court's contempt citation against reporter Sarah Lynn Owens. Owens refused to testify during a criminal proceeding about nonconfidential information she had gathered for a television news story about a Wake County murder case.

Owens would have received far different treatment under a bill now in the Legislature. A measure now before the Judiciary Committee of the N.C. Senate would codify the practice that courts have long honored, and clarify when reporters must testify in a court proceeding. The bill, sponsored by Sen. David Hoyle, D-Gaston, succinctly puts forth three situations in which testimony may be compelled.

Under Hoyle's proposal, anyone who seeks to compel a reporter to testify or produce information must illustrate that the information is highly relevant to the legal proceeding. Furthermore, those seeking the information must demonstrate that it cannot be obtained from other sources and that it is essential to a claim or to the defense of the person on whose behalf the testimony is sought.

Besides codifying what courts have done for years, Hoyle's bill is also a reasonable compromise. It acknowledges that there are situations when the information a reporter has gathered may be important to getting at the truth and seeing that the law and justice are served.

But it also protects reporters by acknowledging that they ought not be used as primary sources of information in criminal or civil investigations. Reporters play the role of watchdog. If courts and lawyers start seeing them as sources of information, then the press is playing a law enforcement role that the Constitution never intended. Worse, this quasi-investigative status would open the whole news-gathering enterprise to subpoenas and other legal actions, chilling the entire process of newsgathering.

The Constitution intended that the press have considerable latitude to get access to information. Hoyle's bill allows today's media to fulfill their constitutional role unimpeded. David Hoyle's bill ought to be passed in this legislative session.

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GEORGE WILL
Columnist

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Editorial from *The News Reporter*, Whiteville

North Carolina journalists, and especially this newspaper, rarely use anonymous sources, but when a story is so compelling that sources can only be used on the condition of anonymity, it is important that these sources be protected. North Carolina does not have a "shield law" that protects journalists from revealing their sources in court. Many journalists would rather serve time in jail and their newspapers suffer egregious fines for contempt than reveal a confidential source. Newspapers are often the only institutions to which people can turn to reveal wrongdoing. Journalists shouldn't have to do their jobs as the Fourth Estate – the "branch" that acts as a watchdog over the others – under the threat of incarceration. Time and time again, the public good is served because someone had the courage to go to a newspaper and tell the truth. The real danger in not having a shield law is that important sources won't come forward because they fear losing their jobs, or worse.

SENATE BILL 1009:
Journalists' Testimonial Privilege.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hoyle
Date:	April 26, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 1009 would codify the journalist privilege against forced testimony as part of the Evidence statute as a qualified privilege in both criminal and civil cases which can be overcome upon a showing of certain circumstances detailed in the bill.***

CURRENT LAW: Current statutory law does not provide for a journalist privilege against testifying. Privileges against testifying do exist in statute for communications between doctor/patient, clergyman/communicant, psychologist/patient, school counsel/student, marital and family counselors/clients, private social worker/client, and professional counselor/client. Journalist/source privilege, like attorney/client privilege, exists under the common law based on case law.

BILL ANALYSIS: Section 1 of the bill provides that a person engaged in gathering information for dissemination via printed or electronic news medium has a qualified privilege against being compelled to disclose any confidential or nonconfidential information, document or item obtained while acting as a journalist. This privilege applies in both criminal and civil actions.

The qualified privilege may be overcome and the journalist compelled to testify upon a finding by the court, by clear and convincing evidence that the testimony or production sought:

(1) Is highly relevant to the legal proceeding for which it is sought,

(2) Cannot be obtained from another source, and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the information or production is sought.

The order to compel the testimony can only be entered after a hearing is held after the journalist has been given notice of the hearing, and the order is enforceable only if it includes clear and specific findings as to the showing made by the person seeking the testimony.

EFFECTIVE DATE: The bill becomes effective when it becomes law and applies to all actions and proceedings pending on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-26-99

S. B. No. S1009-CSRV-001 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) HOYLE

Sen.)

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by BY DELETING THE WORDS "EMPLOYEES OR" AND SUBSTITUTING THE WORDS "EMPLOYEES, INDEPENDENT CONTRACTORS, OR"; AND

ON PAGE 2, LINE 3, BY DELETING THE WORD "PRIMARILY" AND SUBSTITUTING THE WORD "REGULARLY"; AND

ON PAGE 2, LINE 4, BY DELETING THE WORD "GENERAL"; AND

ON PAGE 2, LINE 5, BY DELETING "GENERAL CIRCULATION"; AND

ON PAGE 2, LINE 6 BY DELETING THE WORD "MEANS." AND SUBSTITUTING "MEANS ACCESSIBLE TO THE GENERAL PUBLIC."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, April 26, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **1009** Journalists' Testimonial Privilege

Draft Number:	PCS 6665
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 901

Short Title: Appointment of Juvenile Counsel. (Public)

Sponsors: Senator Wellons.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING THE TIME OF APPOINTMENT OF COUNSEL FOR JUVENILES CHARGED WITH CERTAIN OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2000, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-2000. Juvenile's right to counsel; presumption of indigence.**

(a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. The court shall appoint counsel for the juvenile, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined.

(a1) Prior to the intake evaluation performed by the intake counselor pursuant to G.S. 7B-1702, the court shall appoint counsel for a juvenile who has allegedly committed either a nondivertible offense as defined in G.S. 7B-1701 or an offense that would be a felony if committed by an adult.

(b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 901:
Appointment of Juvenile Counselor

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Wellons
Date:	April 26, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: ***This bill requires the court to appoint an attorney for a juvenile who has allegedly committed a nondivertible offense or an offense that would be a felony if committed by an adult, prior to the intake counselor preparing an intake evaluation. The act becomes effective on October 1, 1999.***

BILL ANALYSIS:

Effective July 1, 1999, upon a finding of legal sufficiency, except in cases involving a nondivertible offense, an intake counselor must determine whether a juvenile petition should be filed, the juvenile should be diverted, or the case should be resolved without further action. Nondivertible offenses are: murder; first degree rape; second degree rape; first degree sexual offense; second degree sexual offense; arson, first degree burglary, crime against nature, any felony that involves willful infliction of serious harm or committed with a deadly weapon; and felony controlled substance offense.

This bill requires the court to appoint an attorney to represent a juvenile who has allegedly committed one of the offenses stated above or any other offense that would be a felony if committed by an adult. The appointment must be made prior to the intake evaluation. (See statute below).

§ 7B-1702. Evaluation.

Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the intake counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Office. The intake process shall include the following steps if practicable:

(1) Interviews with the complainant and the victim if someone other than the complainant;

(2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;

(3) Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1149

Short Title: Prohibit Predatory Lending. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

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, AND TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND 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.~~

(b) (1) Except as provided in subdivision (2) of the subsection (b), a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(2) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home 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 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.

The limitations on prepayment fees and penalties contained in this subdivision (b)(2) 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).~~

(c) (1) If the home loan is one described in subsection (a)(1) or subsection (a)(2) above, 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:

a. 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:

1. Loan application, origination, and commitment fees;

2. Discount points, but only to the extent such 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;

3. Assumption fees to the extent permitted by G.S. 24-10(d);
4. Appraisal fees to the extent permitted by G.S. 24-10(h);
5. 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 to the extent permitted by G.S. 24-8(d); and
6. Additional fees and charges payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (.25%) of the principal amount of the loan, or (ii) one hundred fifty dollars ($150.00). The fees and charges permitted by this subdivision (f) may be charged only by those lenders identified in subdivision (a)(2) of this section, without regard to the loan amount.

b. 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:
1. Discount points, but only to the extent such 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;
2. Assumption fees to the extent permitted by G.S. 24-10(d);
3. Appraisal fees to the extent permitted by G.S. 24-10(h);
4. 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 to the extent permitted by G.S. 24-8(d); and
5. Additional fees and charges payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent(.25%) 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 subdivision (e) may be charged (i) only pursuant to a written agreement made at the time of the modification, renewal, extension, or amendment, and (ii) only by those lenders identified in subsection (a)(2) of this section, without regard to the loan amount.

(2) No lender on home loans under G.S. 24-1.1A(a)(3) may charge or receive any interest, fees, charges, or discount points other than: (i) 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 to the extent permitted by G.S. 24-8(d); (ii) interest as permitted in G.S. 24-1.1A(a)(3); and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(3) No lender on home loans under G.S. 24-1.1(a)(4) may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) 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 to the extent permitted by G.S. 24-8(d); (iii) interest as permitted in G.S. 24-1.1A(a)(4); 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 (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) 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. The lender may charge deferral fees as may be agreed upon by parties to defer the payment of all or part of one or more unpaid installments. If the home loan is of a type described in subsection (b)(2) of this section, the deferral fees shall be subject to the following limitations:

(1) Deferral fees may be charged only pursuant to a written agreement made at the time of the deferral.

(2) Deferral fees may not exceed the greater of:

a. Five percent (5%) of each installment (or part thereof) deferred, multiplied by the number of months in the deferral period (the period in which no payment is required or made by reason of the deferral as measured from the date on which the deferred installment (or part thereof) would otherwise have been payable to the date the next installment (or part thereof) is payable under the terms of the deferral agreement), or

b. Fifty dollars ($50.00) multiplied by the number of months in the deferral period (the period in which no payment is required or made by reason of the deferral as measured from the date on which the deferred installment (or part thereof) would otherwise have been payable to the date the next installment (or part thereof) is payable under the terms of the deferral agreement).

(3) If a deferral fee has once been imposed with respect to a particular installment (or part thereof), no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.

(4) 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.

(5) 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 extend applicable, be considered a modification or extension subject to the provisions of subsection (c)(1)(ii) of this section.

(h) The parties to a home loan governed by G.S. 24-1.1A(a) (1) or (2) 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 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 paid 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 (i) 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 comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater, and (ii) 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 a mortgage or deed or 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 described in subsection (b) 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 (other than amounts held for future payment of taxes) unless the charge is reasonable, the lender receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the lender;

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in subsection (a) or (b) above;

d. All insurance premiums financed by the lender as ;part of the loan transaction other than insurance premiums for fire, casualty, title, flood, or private mortgage insurance related to the loan transaction; provided that insurance premiums calculated and paid on a monthly or other regular, periodic basis shall not be considered financed as part of the loan transaction; and

e. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

(b) Thresholds. A loan will not be considered a high cost home loan unless:

(1) The loan is secured by a first mortgage or first deed of trust on the borrower's principal dwelling, the borrower's principal dwelling which will secure repayment of the loan is not or does not include (or will not be or will not include) a manufactured home as defined in G.S. 143-145(7), and the annual percentage rate at consummation will exceed by more than eight percentage points (8%) the weekly average yield on United States Treasury securities adjusted to a constant maturity of five years (as made available by the federal reserve board) as of the week immediately preceding the week in which the interest rate for the loan is established; or

(2) The loan is secured by a first mortgage or first deed of trust on the borrower's principal dwelling, the borrower's principal dwelling which will secure repayment of the loan is or includes (or will be or will include) a manufactured home as defined in G.S. 143-145(7), and the annual percentage rate at consummation will exceed by more than nine percentage points (9%) the weekly average yield on United States Treasury securities adjusted to a constant maturity of five years (as made available by the Federal Reserve Board) as of the week immediately preceding the week in which the interest rate for the loan is established; or

(3) The loan is secured by a second or subordinate mortgage or a second or subordinate deed of trust on the borrower's principal dwelling, and the annual percentage rate at consummation will exceed by more than nine percentage points (9%) the weekly average yield on United States Treasury securities adjusted to a constant maturity of five years (as made available by the Federal Reserve Board) as of the week immediately preceding the week in which the interest rate for the loan is established; or

(4) The loan documents permit the lender to charge or collect prepayment fees or penalties more than two years after loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid; or

(5) The lender finances 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; or

(6) The total points and fees payable by the borrower at or before loan closing exceed five percent (5%) of the principal amount of the loan; provided, up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction shall be excluded from the calculation of the total points and fees payable by the borrower.

(c) 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 call 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 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 oppressive mandatory arbitration clause. No high cost home loan may be subject to a mandatory arbitration clause which is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. A mandatory arbitration clause shall be presumed to be unfair or oppressive if it limits legal remedies generally available to consumers, limits the right of the borrower to seek relief through the judicial process without a corresponding restriction on the lender's right to judicial relief, and imposes terms which unreasonably favor the lender as a result of a gross disparity in bargaining power between the borrower and the lender.

(6) 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.

(7) 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.

(d) 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 loan without first receiving certification from a home-ownership counselor approved by the Department of Housing and Urban Development 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, co-signer, 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.

(3) No financing of fees or charges. In making a high cost home loan, a lender may not directly or indirectly finance (i) points and fees, or (ii) any charges payable to third parties. In making a high cost home loan, a lender may not directly or indirectly finance 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.

(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.

(e) Unfair and deceptive acts or practices. The making of a high cost home loan which violates any provision of subsection (c) or (d) 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 seeks to avoid its application by any device, subterfuge, or pretense whatsoever including, but not limited to, (i) structuring 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 of or with the effect of evading the provisions of this section. The Attorney General,

the Commissioner of Banks, or any party to a high cost home loan may enforce the provisions of this section.

(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.

(g) Applicability. This section shall apply to loans made or entered into after the effective date of this section.

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, Chapter 25A, or Chapter 53 of the North Carolina 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. Examples of loan-related goods, products, and services include the following: 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 75 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4.

"Unfair Mortgage Brokering and Lending Practices.

"§ 75-90. Purpose and construction.

Home ownership and the preservation of equity in homesteads are vital to the economic and social welfare of North Carolina citizens and their communities. The General Assembly declares that regulation of certain mortgage brokering and lending practices is in the best interests of North Carolina homeowners and in the best interests of ethical mortgage lenders and brokers, and will further free and fair competition in real estate lending in this State. This Article shall be construed to protect homeowners from unfair or deceptive mortgage brokering and lending practices.

"§ 75-91. Definitions.

The following definitions apply in this Article:

(1) 'Mortgage broker' means a person or entity (other than a mortgage lender and the employees of a mortgage lender working in their capacity as employees of a mortgage lender) in the business of soliciting, processing, placing, or negotiating mortgage loans for others or offering to process, place, or negotiate mortgage loans for others.

(2) 'Mortgage lender' means a person or entity who or which for compensation or gain, either directly or indirectly, advances funds, offers to advance funds, or makes a commitment to advance funds to an applicant for a mortgage loan.

(3) 'Mortgage loan' means a loan or other extension of credit to a natural person or persons made primarily for personal, family or household purposes, secured by 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.

(4) 'Unconscionable' means oppressive or totally unreasonable, considering all of the circumstances.

"§ 75-92. Unfair or deceptive acts or practices by mortgage brokers or lenders prohibited.

No mortgage broker or mortgage lender shall engage in any unfair or deceptive practices in the course of brokering or making mortgage loans to residents of this State. Such practices include, but are not limited to, the following:

(1) Brokering or making a mortgage loan which includes points, fees, or other finance charges which, considering the loan transaction as a whole (including the creditworthiness of the borrower, the terms of the loan, the value of the collateral, and the owner's equity in the collateral), so significantly exceed the usual and customary charges incurred by reasonably-informed consumers in this state for such points, fees, or other finance charges as to be unconscionable.

(2) Brokering or making a mortgage loan in which the broker or lender charges and retains fees paid by the borrower (i) for

services which are not actually performed, or (ii) for which the fees bear no reasonable relationship to the value of the services actually performed, or (iii) which are otherwise unconscionable.

(3) Brokering or making a mortgage loan with repayment terms that so clearly exceed the borrower's financial capacity to repay as to be unconscionable. In the case of any amortizing mortgage loan which calls for substantially equal monthly payments of principal and interest, a loan that requires a borrower with a household income below the area median income, as determined by the U.S. Department of Housing and Urban Development, to make monthly amortizing payments (excluding any balloon payment) in excess of fifty percent (50%) of the borrower's monthly gross income shall be prima facie evidence that the payments exceed the borrower's reasonable capacity to repay. In the case of any mortgage loan, evidence that the repayment terms exceed the borrower's reasonable capacity to repay may be rebutted by:

a. A showing that the mortgage broker or mortgage banker reasonably believed at the time the loan was consummated that the borrower and any coborrowers, cosigners, or guarantors collectively had the capacity to repay the loan based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, including the owner's equity in any dwelling and any other collateral securing repayment of the loan; or

b. A showing that other compelling circumstances existed which justified the making of the loan notwithstanding the borrower's apparent lack of capacity to repay the loan.

(4) 'Flipping' mortgage loans; that is, brokering or making a mortgage loan to a borrower which refinances an existing mortgage loan when, considering all the circumstances of the refinancing, the refinancing is unconscionable. This provision shall apply without regard to 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(b).

(5) Charging a borrower points, fees, or other charges in connection with the modification, renewal, extension, or amendment of a mortgage loan when the points, fees, and other charges are so excessive as to be unconscionable or are charged so repeatedly as to be unconscionable. This provision shall apply without regard to whether such points, fees, and other charges paid or payable by the borrower in connection with such modification, renewal, extension, or amendment exceed the usury limitations set forth in Chapter 24 or those thresholds set forth in G.S. 24-1.1E(b).

(6) 'Packing' mortgage loans; that is, the practice of selling credit life, accident and health, disability or unemployment insurance products or unrelated goods or services in conjunction with a mortgage loan without the informed and independent request of the borrower and where:

a. The broker or lender solicits the sale of such insurance, goods or services;

b. The broker or lender receives direct or indirect compensation for the sale of such insurance, goods or services; and

c. The charges for such insurance, goods or services are prepaid with the proceeds of the loan and financed as part of the principal amount of the loan.

Provided, it shall not constitute the practice of 'packing' if the broker or lender, at least three business days before the loan is closed, makes a separate oral and a separate clear and conspicuous written disclosure to the borrower containing the following information: (i) the cost of the credit insurance or other goods and services, (ii) the fact that the insurance, goods, or services will be prepaid and financed at the interest rate provided for in the loan, (iii) whether the cost of the insurance, goods, or services significantly exceeds the price of comparable insurance, goods, or services reasonably available to the borrower in a nonloan transaction; and (iv) that the purchase of such insurance, goods or services is not required to obtain the mortgage loan. Provided further, insurance premiums shall not be considered financed as part of the loan transaction if insurance premiums are calculated, earned, and paid on a monthly or other regular, periodic basis.

(7) Recommending or encouraging default or further default by a borrower on an existing loan or other debt prior to the closing of a mortgage loan that refinances all or any portion of such existing loan or debt.

"**§ 75-93. Remedies.**

A violation of this Article shall constitute a violation of G.S. 75-1.1. The remedies under this Article shall be in addition to any other rights, authority, or causes of actions otherwise available.

"**§ 75-94. Severability.**

The provisions of this Article 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."

Section 6. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1149
Proposed Committee Substitute S1149-PCS3797-RU

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 COUNSELLING 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.~~

(b) (1) Except as provided in subdivision (2) of the subsection (b), a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(2) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home 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 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.

The limitations on prepayment fees and penalties contained in this subdivision (b)(2) 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).~~

(c) (1) If the home loan is one described in subsection (a)(1) or subsection (a)(2) above, 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:

a. 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:

1. Loan application, origination, and commitment fees;

2. Discount points, but only to the extent such 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;

3. Assumption fees to the extent permitted by G.S. 24-10(d);

4. Appraisal fees to the extent permitted by G.S. 24-10(h);

5. 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 to the extent permitted by G.S. 24-8(d); and

6. Additional fees and charges payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (.25%) of the principal amount of the loan, or (ii) one hundred fifty dollars ($150.00). The fees and charges permitted by this subdivision (f) may be charged only by those lenders identified in subdivision (a)(2) of this section, without regard to the loan amount.

b. 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:

1. Discount points, but only to the extent such 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;

2. Assumption fees to the extent permitted by G.S. 24-10(d);

3. Appraisal fees to the extent permitted by G.S. 24-10(h);

4. 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 to the extent permitted by G.S. 24-8(d); and

5. Additional fees and charges payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent(.25%) 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 subdivision (e) may be charged (i) only pursuant to a written agreement made at the time of the modification, renewal, extension, or amendment, and (ii) only by those lenders identified in subsection (a)(2) of this section, without regard to the loan amount.

(2) No lender on home loans under G.S. 24-1.1A(a)(3) may charge or receive any interest, fees, charges, or discount points other than: (i) 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 to the extent permitted by G.S. 24-8(d); (ii) interest as permitted in G.S. 24-1.1A(a)(3); and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(3) No lender on home loans under G.S. 24-1.1(a)(4) may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) 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 to the extent permitted by G.S. 24-8(d); (iii) interest as permitted in G.S. 24-1.1A(a)(4); 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 (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) 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. The lender may charge deferral fees as may be agreed upon by parties to defer the payment of all or part of one or more unpaid installments. If the home loan is of a type described in subsection (b)(2) of this section, the deferral fees shall be subject to the following limitations:

(1) Deferral fees may be charged only pursuant to a written agreement made at the time of the deferral.

(2) Deferral fees may not exceed the greater of:

a. Five percent (5%) of each installment (or part thereof) deferred, multiplied by the number of months in the deferral period (the period in which no payment is required or made by reason of the deferral as measured from the date on which the deferred installment (or part thereof) would otherwise have been payable to the date the next installment (or part thereof) is payable under the terms of the deferral agreement), or

b. Fifty dollars ($50.00) multiplied by the number of months in the deferral period (the period in which no payment is required or made by reason of the deferral as measured from the date on which the deferred installment (or part thereof) would otherwise have been payable to the date the next installment (or part thereof) is payable under the terms of the deferral agreement).

(3) If a deferral fee has once been imposed with respect to a particular installment (or part thereof), no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.

(4) 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.

(5) 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 extend applicable, be considered a modification or extension subject to the provisions of subsection (c)(1)(ii) of this section.

(h) The parties to a home loan governed by G.S. 24-1.1A(a) (1) or (2) 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 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 paid 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 (i) 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 comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater, and (ii) 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 a mortgage or deed or 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 described in subsection (b) 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 (other than amounts held for future payment of taxes) unless the charge is reasonable, the lender receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the lender;

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in subsection (a) or (b) above;

d. All insurance premiums financed by the lender as ;part of the loan transaction other than insurance premiums for fire, casualty, title, flood, or private mortgage insurance related to the loan transaction; provided that insurance premiums calculated and paid on a monthly or other regular, periodic basis shall not be considered financed as part of the loan transaction; and

e. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

(b) Thresholds. A loan will not be considered a high cost home loan unless:

(1) The loan is secured by a first mortgage or first deed of trust on the borrower's principal dwelling, the borrower's principal dwelling which will secure repayment of the loan is not or does not include (or will not be or will not include) a manufactured home as defined in G.S. 143-145(7), and the annual percentage rate at consummation will exceed by more than eight percentage points (8%) the weekly average yield on United States Treasury securities

adjusted to a constant maturity of five years (as made available by the federal reserve board) as of the week immediately preceding the week in which the interest rate for the loan is established; or

(2) The loan is secured by a first mortgage or first deed of trust on the borrower's principal dwelling, the borrower's principal dwelling which will secure repayment of the loan is or includes (or will be or will include) a manufactured home as defined in G.S. 143-145(7), and the annual percentage rate at consummation will exceed by more than nine percentage points (9%) the weekly average yield on United States Treasury securities adjusted to a constant maturity of five years (as made available by the Federal Reserve Board) as of the week immediately preceding the week in which the interest rate for the loan is established; or

(3) The loan is secured by a second or subordinate mortgage or a second or subordinate deed of trust on the borrower's principal dwelling, and the annual percentage rate at consummation will exceed by more than nine percentage points (9%) the weekly average yield on United States Treasury securities adjusted to a constant maturity of five years (as made available by the Federal Reserve Board) as of the week immediately preceding the week in which the interest rate for the loan is established; or

(4) The loan documents permit the lender to charge or collect prepayment fees or penalties more than two years after loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid; or

(5) The lender finances 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; or

(6) The total points and fees payable by the borrower at or before loan closing exceed five percent (5%) of the principal amount of the loan; provided, up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction shall be excluded from the calculation of the total points and fees payable by the borrower.

(c) 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 call 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 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 oppressive mandatory arbitration clause. No high cost home loan may be subject to a mandatory arbitration clause which is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. A mandatory arbitration clause shall be presumed to be unfair or oppressive if it limits legal remedies generally available to consumers, limits the right of the borrower to seek relief through the judicial process without a corresponding restriction on the lender's right to judicial relief, and imposes terms which unreasonably favor the lender as a result of a gross disparity in bargaining power between the borrower and the lender.

(6) 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.

(7) 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.

(d) 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 loan without first receiving certification from a home-ownership counselor approved by the Department of Housing and Urban Development 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, co-signer, 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.

(3) No financing of fees or charges. In making a high cost home loan, a lender may not directly or indirectly finance (i) points and fees, or (ii) any charges payable to third parties. In making a high cost home loan, a lender may not directly or indirectly finance 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.

(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.

(e) Unfair and deceptive acts or practices. The making of a high cost home loan which violates any provision of subsection (c) or (d) 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 seeks to avoid its application by any device, subterfuge, or pretense whatsoever including, but not limited to, (i) structuring 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 of or with the effect of evading the provisions of this section. The Attorney General, the Commissioner of Banks, or any party to a high cost home loan may enforce the provisions of this section.

(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.

(g) Applicability. This section shall apply to loans made or entered into after the effective date of this section.

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, Chapter 25A, or Chapter 53 of the North Carolina 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. Examples of loan-related goods, products, and services include the following: 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 75 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4.

"Unfair Mortgage Brokering and Lending Practices.

"§ 75-90. Purpose and construction.

Home ownership and the preservation of equity in homesteads are vital to the economic and social welfare of North Carolina citizens and their communities. The General Assembly declares that regulation of certain mortgage brokering and lending practices is in the best interests of North Carolina homeowners and in the best interests of ethical mortgage lenders and brokers, and will further free and fair competition in real estate lending in this State. This Article shall be construed to protect homeowners from unfair or deceptive mortgage brokering and lending practices.

"§ 75-91. Definitions.

The following definitions apply in this Article:

(1) 'Mortgage broker' means a person or entity (other than a mortgage lender and the employees of a mortgage lender working in their capacity as employees of a mortgage lender) in the business of soliciting, processing, placing, or negotiating mortgage loans for others or offering to process, place, or negotiate mortgage loans for others.

(2) 'Mortgage lender' means a person or entity who or which for compensation or gain, either directly or indirectly, advances funds, offers to advance funds, or makes a commitment to advance funds to an applicant for a mortgage loan.

(3) 'Mortgage loan' means a loan or other extension of credit to a natural person or persons made primarily for personal, family or household purposes, secured by 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.

(4) 'Unconscionable' means oppressive or totally unreasonable, considering all of the circumstances.

"§ 75-92. Unfair or deceptive acts or practices by mortgage brokers or lenders prohibited.

No mortgage broker or mortgage lender shall engage in any unfair or deceptive practices in the course of brokering or making mortgage loans to residents of this State. Such practices include, but are not limited to, the following:

(1) Brokering or making a mortgage loan which includes points, fees, or other finance charges which, considering the loan transaction as a whole (including the creditworthiness of the borrower, the terms of the loan, the value of the collateral, and the owner's equity in the collateral), so significantly exceed the usual and customary charges incurred by reasonably-informed consumers in this state

for such points, fees, or other finance charges as to be unconscionable.

(2) Brokering or making a mortgage loan in which the broker or lender charges and retains fees paid by the borrower (i) for services which are not actually performed, or (ii) for which the fees bear no reasonable relationship to the value of the services actually performed, or (iii) which are otherwise unconscionable.

(3) Brokering or making a mortgage loan with repayment terms that so clearly exceed the borrower's financial capacity to repay as to be unconscionable. In the case of any amortizing mortgage loan which calls for substantially equal monthly payments of principal and interest, a loan that requires a borrower with a household income below the area median income, as determined by the U.S. Department of Housing and Urban Development, to make monthly amortizing payments (excluding any balloon payment) in excess of fifty percent (50%) of the borrower's monthly gross income shall be prima facie evidence that the payments exceed the borrower's reasonable capacity to repay. In the case of any mortgage loan, evidence that the repayment terms exceed the borrower's reasonable capacity to repay may be rebutted by:

a. A showing that the mortgage broker or mortgage banker reasonably believed at the time the loan was consummated that the borrower and any coborrowers, cosigners, or guarantors collectively had the capacity to repay the loan based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, including the owner's equity in any dwelling and any other collateral securing repayment of the loan; or

b. A showing that other compelling circumstances existed which justified the making of the loan notwithstanding the borrower's apparent lack of capacity to repay the loan.

(4) 'Flipping' mortgage loans; that is, brokering or making a mortgage loan to a borrower which refinances an existing mortgage loan when, considering all the circumstances of the refinancing, the refinancing is unconscionable. This provision shall apply without regard to 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(b).

(5) Charging a borrower points, fees, or other charges in connection with the modification, renewal, extension, or amendment of a mortgage loan when the points, fees, and other charges are so excessive as to be unconscionable or are charged so repeatedly as to be unconscionable. This provision shall apply without regard to

whether such points, fees, and other charges paid or payable by the borrower in connection with such modification, renewal, extension, or amendment exceed the usury limitations set forth in Chapter 24 or those thresholds set forth in G.S. 24-1.1E(b).

(6) 'Packing' mortgage loans; that is, the practice of selling credit life, accident and health, disability or unemployment insurance products or unrelated goods or services in conjunction with a mortgage loan without the informed and independent request of the borrower and where:

a. The broker or lender solicits the sale of such insurance, goods or services;

b. The broker or lender receives direct or indirect compensation for the sale of such insurance, goods or services; and

c. The charges for such insurance, goods or services are prepaid with the proceeds of the loan and financed as part of the principal amount of the loan.

Provided, it shall not constitute the practice of 'packing' if the broker or lender, at least three business days before the loan is closed, makes a separate oral and a separate clear and conspicuous written disclosure to the borrower containing the following information: (i) the cost of the credit insurance or other goods and services, (ii) the fact that the insurance, goods, or services will be prepaid and financed at the interest rate provided for in the loan, (iii) whether the cost of the insurance, goods, or services significantly exceeds the price of comparable insurance, goods, or services reasonably available to the borrower in a nonloan transaction; and (iv) that the purchase of such insurance, goods or services is not required to obtain the mortgage loan. Provided further, insurance premiums shall not be considered financed as part of the loan transaction if insurance premiums are calculated, earned, and paid on a monthly or other regular, periodic basis.

(7) Recommending or encouraging default or further default by a borrower on an existing loan or other debt prior to the closing of a mortgage loan that refinances all or any portion of such existing loan or debt.

"**§ 75-93. Remedies.**

A violation of this Article shall constitute a violation of G.S. 75-1.1. The remedies under this Article shall be in addition to any other rights, authority, or causes of actions otherwise available.

"**§ 75-94. Severability.**

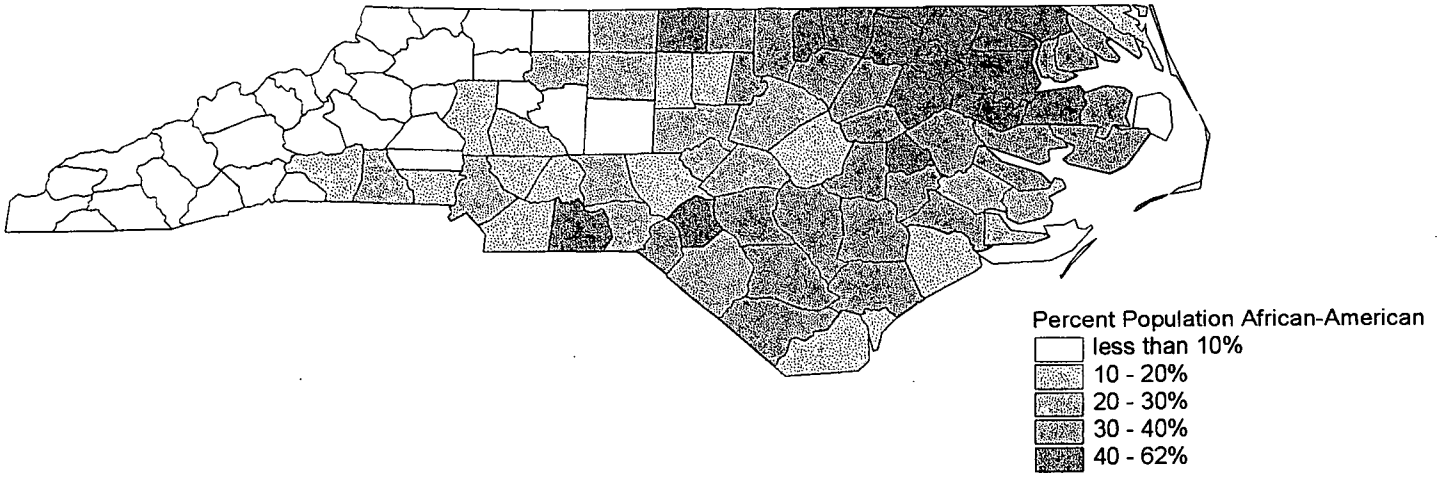
The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby."

Section 5.1. There is appropriated from the General Fund to the Office of Commissioner of Banks, the sum of one hundred thousand dollars ($100,000) for the 1999-2000 fiscal year to develop and implement, in consultation with the Attorney General, a program of public education and counselling, 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.

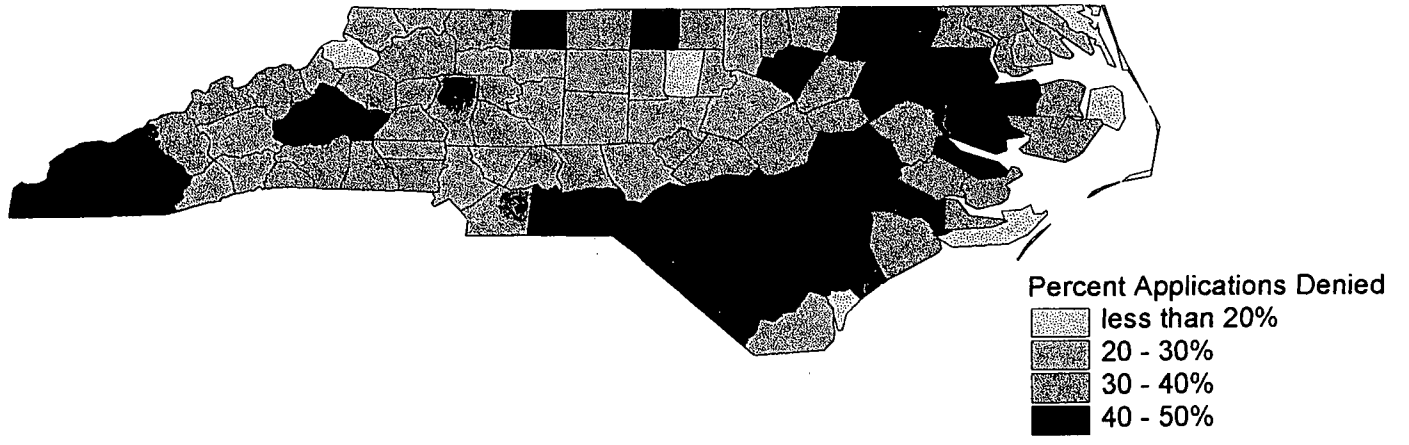
Section 6. This act becomes effective October 1, 1999.

Subprime Loans in North Carolina: Disproportionate Impact in Black Belt Counties

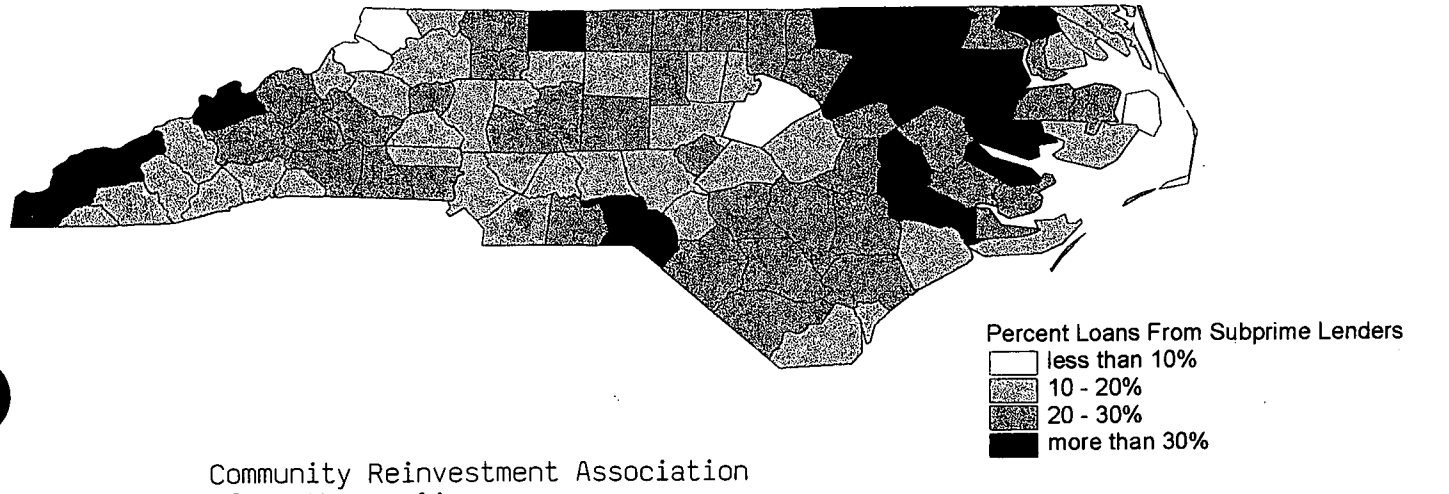
Percent Population African-American by County (1990 Census)



Loan Denial Rate of Banks, 1997 HMDA Data



Percent of HMDA-Reported Loans That Were Made by Subprime Lenders, 1997

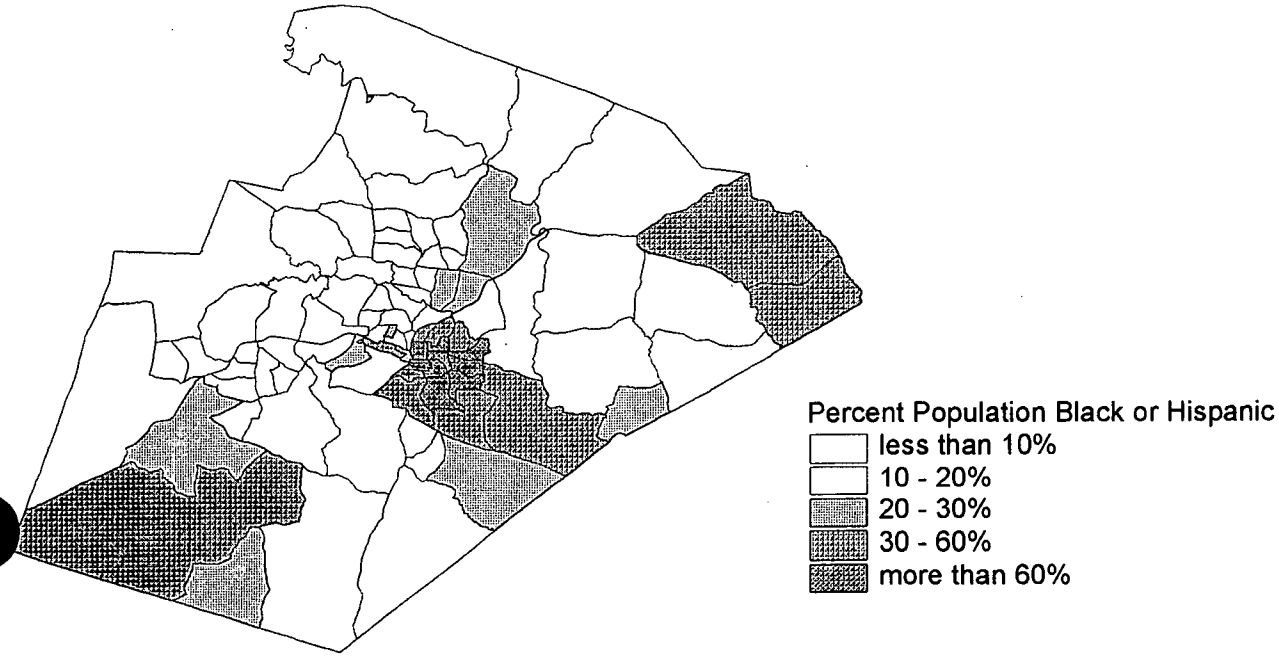


Community Reinvestment Association
of North Carolina

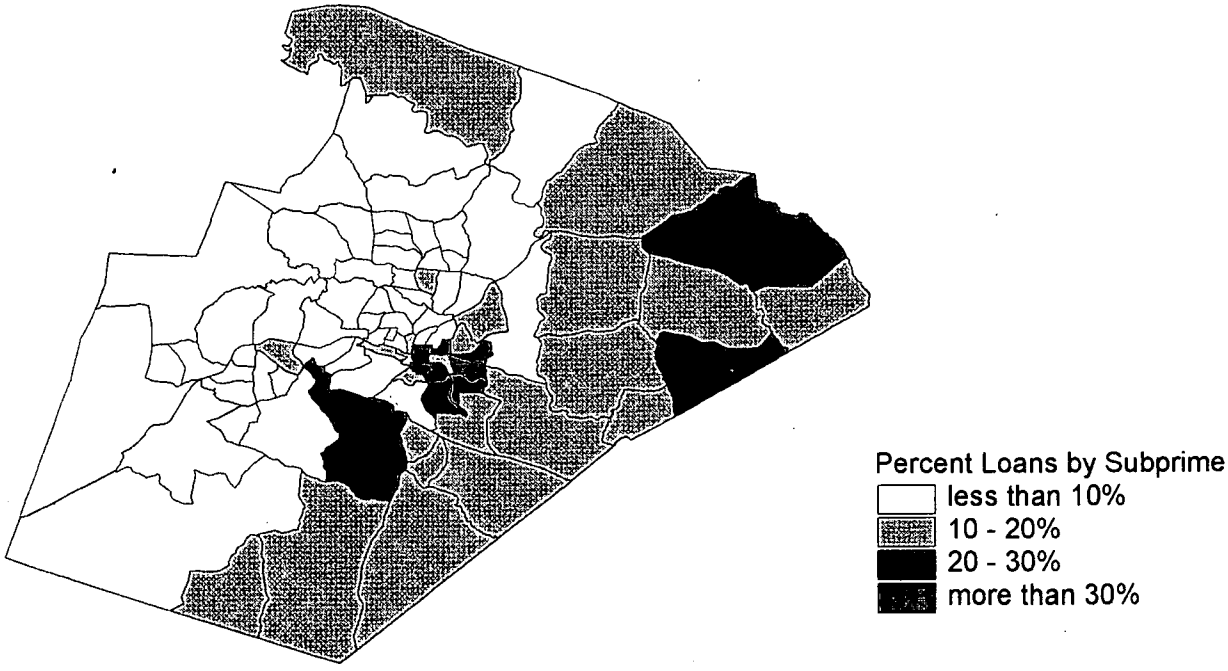
Subprime Lending in Wake County, NC
Disproportionate Impact on Minority Communities

Less than 10% of all loans made in Wake County were made by subprime lenders overall. However, all of the census tracts receiving more than 30% of their loans from subprime lenders had populations with high concentrations of African-Americans and Hispanics.

Percent Population of Census Tract Black or Hispanic (1990 Census)



Percent of all HMDA-Reported Loans Made by Subprime Lenders, 1997



Community Reinvestment Association Of North Carolina

Speakers List for Senate Judiciary I Committee
April 26, 1999

Mike Easley, N. C. Attorney General

Thomas Wright, Chair of the NC Legislative Black Caucus

Rev. Thomas Walker, Rocky Mount
Joyce Dickens, President, Rocky Mount/Edgecomb CDC

Andrea Harris, President of NC Institute for Minority Economic Development

Abdul Rasheed, President, NC Community Development Initiative

Rev. George Allison, Executive Director, NAACP

Gina Pettis-Dean, Director for Youth and College Chapters of NAACP

Paul Stock, NC Bankers Association

Larry Johnson, President, NC Credit Union Network

Fred Yates, Mayor of Winfall

Lavonia Allison, Larry Hall, Durham Committee on the Affairs of Black People

Rhonda Raney, President, NC Association of Community Development Corporations

Kaye Gantt for Linwood Cox, President, NC Minority Support Center

Evon Smith, former broker/lender

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1068

Short Title: McGruff Crim. Backgd. Checks. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL LAW ENFORCEMENT AGENCIES TO ACCESS THE CRIMINAL INFORMATION NETWORK TO RUN CRIMINAL BACKGROUND CHECKS ON VOLUNTEERS FOR THE MCGRUFF HOUSES PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.8. Criminal record checks of McGruff House Program volunteers.**

(a) Authority. -- The Department of Justice may provide to any local law enforcement agency a criminal record check of any individual who applies as a volunteer for the McGruff House Program in that community and a criminal record check of all persons 18 years of age or older who live in the applying household. The criminal record check may also be done by a certified DCI operator within the local law enforcement agency.

(b) Procedure. -- A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if: (i) the individual whose record is checked consents to the record check, and (ii) every individual who is 18 years of age or older who lives in the household also consents to the record check. The information shall be kept confidential by the local law enforcement agency that receives the information. If the confidential information is disclosed under this section, the Department may refuse to provide further criminal record checks to that local law enforcement agency."

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

SENATE BILL 1068:
McGruff Criminal Background Checks.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 26, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 1068 would permit the SBI to furnish criminal history information to local law enforcement agencies for criminal background checks of volunteers for the McGruff House Program and the adult members o the volunteers household.

CURRENT LAW: Current law permits local law enforcement agencies access to criminal background information for law enforcement purposes and for paid law enforcement employees, but not for volunteers. Current law allows various public and private agencies that provide care for children, the sick, the disabled, or the elderly, to request State criminal history record checks. Mandatory criminal history record checks, which include national criminal history records, are required in many situations, including school personnel, foster parents, day care workers, adoptive parents, and caregivers and their supervisors in the Department of Health and Human Services and the Office of Juvenile Justice.

BILL ANALYSIS: The bill would authorize the Department of Justice to provide to any local law enforcement agency a criminal record check of any potential volunteer for the McGruff House Program, and any adult member of the volunteer's household. These checks would be fingerprint-based checks of the State Repository of Criminal Histories. The information furnished is to remain confidential. This section also authorizes the local DCI operator to conduct this check from the State database.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1011*

Short Title: Bullet-Proof Vest/Commit Felony. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ENHANCED CRIMINAL PENALTY SHALL BE IMPOSED ON A PERSON WHO POSSESSES A BULLET-PROOF VEST WHILE COMMITTING A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant possessed a bullet-proof vest during the commission of the felony.**

(a) If a person is convicted of a felony and the court finds that the person possessed a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

SENATE BILL 1011:
Bullet-Proof Vest/Commit Felony

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Cooper
Date:	April 26, 1999	**Summary by:**	Jo B. McCants Committee Co-Counsel
Version:	`1		

SUMMARY: This bill increases the penalty for a defendant who possessed a bulletproof vest while committing a felony. If a defendant is convicted of a felony and the court finds that the defendant possessed a bulletproof vest during the commission of the crime, the defendant will be found guilty of a felony one class higher than the underlying felony. If the possession of the bulletproof vest is an element of the underlying offense, the enhanced punishment does not apply.

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

68365 SHIELDS BUSINESS FORMS, RALEIGH, NC 27603

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1011 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 1, line 11
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "was wearing or had in his or her
6 immediate possession a bullet-proof
7 vest at the time of the felony, then
8 the person is guilty of a";
9
10 and on page 1, line 3, by deleting the
11 word "Possessed" and substituting
12 the term "has in his or her immediate
13 possession or is wearing"; and on
14 page 1, line 9 by deleting the
15 word "possessed" and substituting the
16 term "~~had in his or her immediate~~
17 ~~possession~~ "was wearing or had in his
18 or her immediate possession."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 292

Short Title: Sup. Ct. Crim. Case Docketing Plan. (Public)

Sponsors: Senators Ballance; Carpenter, Carrington, Hoyle, Jordan, Kerr, Kinnaird, Lee, Lucas, Martin of Pitt, Miller, Odom, Purcell, Reeves, Shaw of Cumberland, Warren, Weinstein, and Wellons.

Referred to: Judiciary I.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE CALENDARED PURSUANT TO CRIMINAL CASE DOCKETING PLANS DEVELOPED FOR EACH DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A is amended by adding a new section to read:

"**§ 7A-49.4. Superior court criminal case docketing plans.**

(a) Criminal Docketing Plans. -- Criminal cases in superior court shall be calendared according to a criminal case docketing plan developed for each district by a district committee composed of the senior resident superior court judge, the district attorney, and one member of the defense bar practicing in the district chosen by the membership of the district 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) Initial Administrative Setting. -- An initial administrative setting shall be calendared for each felony within 30 days of indictment. At the initial administrative setting, the court shall determine the status of the defendant's representation by counsel. The court shall also, after hearing from the parties, set deadlines for the delivery of discovery, the filing of pretrial motions, and the setting of a second administrative setting. The scheduling order shall require that discovery be provided

no later than 21 days before the second administrative setting, and that each party shall have at least 10 days from the receipt of discovery to file pretrial motions.

(c) Second Administrative Setting. -- No less than five days prior to the second administrative setting, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement. During the second administrative setting the court shall hear all pending pretrial motions. Upon a showing of good cause, the court may schedule hearings on pending pretrial motions for a date certain, may permit the filing of additional pretrial motions, or may defer ruling on motions until the trial of the case. The court may also conduct a plea conference if supported by the interest of justice. Upon the conclusion of the hearing of any pretrial motions or plea conference, the court shall, after hearing from the parties as to a proposed trial date, set a date for trial. The trial shall occur no sooner than 30 days after the second administrative setting.

(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.

(e) Setting and Publishing of Trial Calendar. -- No less than 10 days before cases are calendared for trial, the district attorney shall set and publish the trial calendar. The trial calendar shall set the cases in the order in which they will be called for trial, and may not contain cases that the district attorney does not reasonably expect to be called for trial.

(f) Order of Trial. -- Cases shall be called for trial in the order listed on the trial calendar. 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 for good cause shown. The presiding judge, after consultation with the parties, shall set a new trial date for cases not reached during that session of court.

(g) Modification or Waiver of Deadlines. -- The application of deadlines and other aspects of the criminal docketing plan may be modified or waived by consent of the State and the defendant, and with the approval of the court. Nothing in this section precludes the early production of discovery or early resolution of cases through plea.

(h) Development of the Plan. -- Each superior court district shall develop a criminal case docketing plan by January 1, 2000. Each plan shall provide for transitional procedures for cases pending on the date that the plan becomes effective. Copies of the plan shall be made available to the district bar and the judicial officials in the district. In addition, a copy of the plan shall be sent to the Chief Justice no later than January 1, 2000.

(i) Acceptance of the Plan. -- The Chief Justice or the Chief Justice's designee shall examine each proposed criminal case docketing plan to determine whether it complies with the requirements of this section. Upon certification by the Chief Justice or the Chief Justice's designee, the plan shall be accepted and, beginning January 1, 2000, shall be the exclusive and binding plan for criminal case docketing in that district beginning 60 days from the acceptance. If no plan has been accepted for a particular district by January 1, 2000, then an accepted plan for another district

chosen by the Chief Justice or the Chief Justice's designee shall be the exclusive and binding plan for criminal case docketing in that district.

(j) Amendments to the Plan. -- The district committee established pursuant to subsection (a) of this section may propose a new plan or amendments to the existing plan after full consultation with the district bar and the superior court judges in the district. The existing plan shall remain in effect until the new plan or amendments are accepted under the procedure set forth in subsection (i) of this section. Any new or amended plan shall be effective 60 days from the date of acceptance."

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,~~ dockets pursuant to the provisions of the criminal case docketing plan established under G.S. 7A-49.4, prosecute 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. G.S. 15A-9943 reads as rewritten:

"**§ 15A-943. Arraignment in superior court -- Required calendaring.**

(a) In counties in which there are regularly scheduled 20 or more weeks of trial sessions of superior court at which criminal cases are heard, and in other counties the Chief Justice designates, ~~the prosecutor must calendar~~ arraignments in the superior court shall be calendared pursuant to the criminal case docketing plan established under G.S. 7A-49.4 on at least the first day of every other week in which criminal cases are heard. No cases in which the presence of a jury is required may be calendared for the day or portion of a day during which arraignments are calendared.

(b) When a defendant pleads not guilty at an arraignment required by subsection (a), he may not be tried without his consent in the week in which he is arraigned.

(c) Notwithstanding the provisions of subsection (a) of this section, in any county where as many as three simultaneous sessions of superior court, whether criminal, civil, or mixed, are regularly scheduled, ~~the prosecutor may calendar~~ arraignments may be calendared pursuant to the criminal case docketing plan established under G.S. 7A-49.4 in any of the criminal or mixed sessions, at least every other week, upon any day or days of a session, and jury cases may be calendared for trial in any other court at which criminal cases may be heard, upon such days."

Section 5. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S292-PCSSE-010
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill 292
THIS IS A DRAFT 26-APR-99 13:51:53
ATTENTION: 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 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 at administrative settings as provided in this section.

(b) Administrative Settings. -- An administrative setting shall be calendared for each felony within 30 days of indictment. 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.

(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) Definite Trial Dates. -- If no trial is held within one year after the date of the final administrative setting, then upon motion of the defendant, for good cause shown, the court may set a trial for a date certain.

(f) 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 the anticipated 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.

(g) 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 for good cause shown. The district attorney, after consultation with the parties and subject to the approval of the court, shall schedule a new trial date for cases not reached during that session of court."

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:
Superior Court Criminal Case Docketing

BILL ANALYSIS

Committee:	Senate J1	**Introduced by:**	Senator Ballance
Date:	April 26, 1999	**Summary by:**	Jo B. McCants
Version:	S292-PCSSE-010		Committee Counsel

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 30 days of indictment.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 must schedule subsequent administrative settings, if necessary.

The district attorney is required to propose a trial date following the administrative settings. The trial should not occur less than 30 days following the final administrative setting.

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.

C) Definite Trial Dates:

A defendant, for good cause shown, may request that a date certain be given for the defendant's trial, if a trial has not been held within 1 year of the final administrative setting.

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.
4. The district attorney should make an effort to inform each defendant of the anticipated order in which the cases will be heard.

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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-26-99

S. B. No. 292 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S292-PCSSE-010

Rep.) ~~Boseman~~ Rand

Sen.)

1 moves to amend the bill on page 3, line 14

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4

5 "The presiding judge or resident

6 superior court judge, for good

7 cause shown. The district attorney";

9 and on page 2, line 29 by

10

11 deleting the word "court" and substituting

12 the phrase "Senior Resident Superior

13 Court Judge.".

14

15

16

17

18

19

SIGNED Tony Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, April 26, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **901** Appointment of Juvenile Counsel
Sequential Referral: None
Recommended Referral: None

S.B. **1068** McGruff Crim. Backgd. Checks
Sequential Referral: None
Recommended Referral: None

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

S.B. **12** Judicial Appt./Voter Retention
Draft Number: PCS 3792
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **835** Revise Law Governing Mergers
Draft Number: PCS 1717
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-26-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jeanette Bradley	Community Reinvestment Association of NC
Peter Skillern	P.O. Box 28568 Raleigh NC 27611 856-2170
Betsy Younce	Anchor Financial Group POB 10902, Raleigh, NC 27605
Joseph Thorsay	Coastal Federal Credit Union
Marshall West	" " " "
Henri McClees	McClees Consulting, Inc
[illegible]	ASSE
Michael Crum	1410 Banbury Rd Raleigh, NC
Julian D. Brown	4608 Oak Park Rd. Ral, NC
Elodie Alexander	NCCDI
[illegible]	UCI, A. Wilson, NC
[illegible]	AFHC
[illegible]	SECU State Employees' Credit Union
Steve Hendl	SECU
[illegible]	SECU
[illegible]	SECU

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-26-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Marty Manta	Attorney Raleigh NC
Laura Hartsell	NC Bar Association
Bobby Hall	State Employees' Credit Union
Roy D. Hugh	N.C. Local Gov't Federal Credit Union
Jerri J. Kattmann	NC Credit Union Division
Davis R. Dowd	Beacon Mortgage Services Inc.
Melinda Deanes	Attorney Raleigh NC
SUSAN LUPTON	COALITION FOR RESPONSIBLE LENDING
Mark Pearce	Coalition for Responsible Lending
Cynthia Williams	Southerners For Economic Justice Durham N
BRUCE THOMPSON	CONSULTING ENGINEERS OF NC
Stacy Flannery	NC HCFA
Kevin FitzGerald	NC DHHS - DSS
Lou B. Wehrung	NC AFTCF.
Larry Lechner	Household Financial Group

VISITOR REGISTRATION SHEET

J-1 — 4-26-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
J. Colon Adams	Consulting Eng. / NC.
Dave Shipp	Carolinas AGC
Larry Dix	OJT
David Brehmer	First Carolina Corporate C.U.
Tom Mahr	NCATL
Jim Blaine	State Employees' Credit Union
Larry Heckner	Household Financial Group.
Mike Lord	NC Press Assoc. Federal Credit Union
Bill Farrell	DOJ
Brent Merton	State Employee's Credit Union
Harry Dixon	State Employees Credit Union
LaShon A. Harley	NAACP
David A. Willis	UNC-EMBA / Concerned Citizen
Rev. H.B. Pickett, Sr	NAACP / Raleigh-Apex Branch
FARAD Ali	DURHAM
Hayes Hyman	Raleigh - N.C. Assn. Mortgage Broker

VISITOR REGISTRATION SHEET

Senate I-I
Name of Committee

4-26-99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Alan Hirsch	Atty. Gen's Office
Otis M. Breeden	Deputy Commissioner of Banks
McNeil Cochrane	Assistant Attorney General
Hal D. Lingerfelt	Commissioner of Banks
Martin Eckes	Self-Help
Joe McClees	Safety Engineers
Alan Miles	Baley & Dixon
Larry Johnson	NC Credit Union League
Michael Beall	NC Credit Union League
Dan Schlinic	N/C Credit Union League
Rhonda Barney	NCACDC
Fred Mathes	Mayor Town of Wilkesboro N.C
Jon Williams	CCPS
JOHN PAULS	ASSE
JERRY GARNER	ASSE

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kaye Garrett	NC Minority Support Ctr.
Bethany Chaney	NC Minority Support Ctr, Raleigh
[illegible]	Nations Best Financial Services
JANET Whitaker	PINNACLE MORTGAGE INC.
Bill Pemberton	1st Flight Federal Credit Union
Tammy Canada	RTP Federal Credit Union
S. Gibbs	Charlotte Observer
Andrea Harris	NC Institute of Minority Economic Dev.
Gina Dean	NC NAACP
Joyce Baffi	Attorney General's Office
Pamela Fingerhut	"
Dick Carlton	NC FSA
Sandy Sanger	WCSR
Tom Duncan	WCSR
Paul Stock	N.C. Bankers Assn.

VISITOR REGISTRATION SHEET

J-1 — 4/26/99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Rau	Grass Roots NC
Ron Aycock	N.C. Assoc. County Comm.
John Phelps	NCLM
Mike Davis	Mike Davis Public Relations
Zeb Alley	ZDA PA
Greg Kirkpatrick	Habitat for Humanity of Wake Co.
Eric Stein	Self-Help
JANE ESTES	NCAMB - NC Assn of Mortgage Brokers
Vickie Waddell	NCAMB
Donald Fader	NCAMB
LARRY Bewley	L B Assoc.
John McMillan	MFDS
Kara Crawford	NCAMB
DICK BOISKY	NCAMB
Kelly Stevens	NCAMB
Bill Bost	

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-26-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Lawrence King	NC Assn of CDC 112 Person St Raleigh NC
[signature]	AOC
Margaret Ellis	Gateway CDC 314 Garnett St. Henderson, N.C. 27536
[signature]	NCVTCR
[signature]	NC Equity
[signature]	NC State AFL-CIO

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 27, 1999

The Senate Judiciary I Committee met on April 27, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Jordan to explain **Senate Bill 852 – AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.**

Pete Powell, Deputy Director of the Administrative Office of the Courts, was recognized to speak on the bill.

Senators Soles and Rand moved to amend the bill on Page 1, Line 12. The motion carried by a majority voice vote. (Amendment is attached.)

Senator Gulley moved to give Senate Bill 852 a favorable report as amended and roll it into a Committee Substitute.

Senator Gulley was recognized to explain **House Bill 921 – AN ACT TO REWRITE THE DEFINITIONS OF "POLITICAL COMMITTEE," "CONTRIBUTION," "EXPENDITURE," AND "CANDIDATE"; TO ADD A DEFINITION OF "INDEPENDENT EXPENDITURE"; TO REMOVE THE TERM "POLITICAL PURPOSE"; TO NARROW THE PROHIBITION ON CORPORATE AND OTHER POLITICAL EXPENDITURES TO CONSTITUTIONAL BOUNDS; TO MERGE THE FIRST QUARTERLY REPORT WITH THE PRE-PRIMARY REPORT; TO AMEND THE STATUTES WITH REGARD TO REPORTING CONTRIBUTIONS AND EXPENDITURE AND TO MAKE OTHER CHANGES RELATED TO REPAIRING THE CAMPAIGN STATUTES AFTER THE DECISION OF THE FOURTH U. S. CIRCUIT COURT OF APPEALS IN NORTH CAROLINA RIGHT TO LIFE, INC., V. BARTLETT** sponsored by Representative Baddour.

Representative Baddour was recognized to comment on the bill.

Susan Nickolson, with the Attorney General's office, and Bill Gilkeson, with the Bill Drafting Division, was recognized to answer questions from the Committee.

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

Senator Hoyle was recognized to explain **Senate Bill 1005 – AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR 2000 PROBLEMS.**

Senator Hoyle moved to adopt a Proposed Committee Substitute to Senate Bill 1005 for discussion. The motion carried by a majority voice vote.

Paul Stock, with the N. C. Bankers Association, was recognized to speak on the bill.

Senator Soles moved to give the Proposed Committee Substitute to Senate Bill 1005 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, April 27, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 794	Exempt Tobacco Settlement Payments	Wellons
SB 852	Drug Treatment Court Amendments	Jordan
SB 902	Juvenile Transfer to Superior Court	Wellons
SB 908	Revise UCC Warehouse Receipts	Albertson
SB 918	Juvenile Justice Tech. Corrections	Cooper
SB 1005	Year 2000 Liability Limitations	Hoyle
SB 1065	Amend Impeachment Evidence Rule	Rand
SB 1154	Amend Assault Infl. Serious Injury	Rand
HB 921	Campaign Finance Changes	Baddour

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 27, 1999

SB 794	Exempt Tobacco Settlement Payments	Wellons
SB 852	Drug Treatment Court Amendments	Jordan
SB 902	Juvenile Transfer to Superior Court	Wellons
SB 908	Revise UCC Warehouse Receipts	Albertson
SB 918	Juvenile Justice Tech. Corrections	Cooper
SB 1005	Year 2000 Liability Limitations	Hoyle
SB 1065	Amend Impeachment Evidence Rule	Rand
SB 1154	Amend Assault Infl. Serious Injury	Rand
HB 921	Campaign Finance Changes	Baddour

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 852

Short Title: Drug Treatment Court Amendments. (Public)

Sponsors: Senators Jordan and Ballance.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. -- A defendant eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor pursuant to a written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program."

Section 2. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes."

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

SENATE BILL 852:
Drug Treatment Court Amendments

BILL ANALYSIS

Committee: Senate J1
Date: April 27, 1999
Version: 1

Introduced by: Senators Jordan and Ballance
Summary by: Jo B. McCants
Committee Co-Counsel

SUMMARY: ***This bill allows a defendant who is eligible for the Drug Treatment Court Program to be placed on probation, if the prosecutor has deferred prosecution in the case so that the defendant can participate in the Drug Treatment Court Program. The bill also adds as a special condition of probation the participation in and the successful completion of a Drug Treatment Court Program. The act becomes effective when it becomes law. (See statutes below.)***

§ 15A-1341. Probation generally.

(a) Use of Probation. - Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1.

(a1) Deferred Prosecution. - A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:

(1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.

(3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.

(4) The defendant has not previously been placed on probation and so states under oath.

(5) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

(b) Supervised and Unsupervised Probation. - The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by or assignment to a probation officer.

(c) Repealed by Session Laws 1995, c. 429, s. 1, effective January 1, 1997.

§ 15A-1343(b1). Special Conditions of probation.

(b1) Special Conditions. - In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

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

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days and abide by all rules and

regulations of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3, effective December 1, 1997.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/27/99

S. B. No. 852 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Sales and Rand

moves to amend the bill on page 1, line 12

( ) WHICH CHANGES THE TITLE

by ~~deleting the~~ deleting the word "prosecutor" and ~~add~~ substituting the phrase "with the approval of the court,";

and on page 1, line 14 by deleting the phrase ", with the approval of the court,".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 921*
Committee Substitute Favorable 4/15/99
Third Edition Engrossed 4/20/99

Short Title: Campaign Finance Changes. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE DEFINITIONS OF "POLITICAL COMMITTEE," "CONTRIBUTION," "EXPENDITURE," AND "CANDIDATE"; TO ADD A DEFINITION OF "INDEPENDENT EXPENDITURE"; TO REMOVE THE TERM "POLITICAL PURPOSE"; TO NARROW THE PROHIBITION ON CORPORATE AND OTHER POLITICAL EXPENDITURES TO CONSTITUTIONAL BOUNDS; TO MERGE THE FIRST QUARTERLY REPORT WITH THE PRE-PRIMARY REPORT; TO AMEND THE STATUTES WITH REGARD TO REPORTING CONTRIBUTIONS AND EXPENDITURES; AND TO MAKE OTHER CHANGES RELATED TO REPAIRING THE CAMPAIGN STATUTES AFTER THE DECISION OF THE FOURTH U.S. CIRCUIT COURT OF APPEALS IN NORTH CAROLINA RIGHT TO LIFE, INC., V. BARTLETT.

The General Assembly of North Carolina enacts:

-- REDEFINING "POLITICAL COMMITTEE" AND RELATED CHANGES.

Section 1.(a) G.S. 163-278.6(14) reads as rewritten:

"(14) The term 'political committee' means a combination of two or more individuals, or any person, committee, association, ~~or~~ organization, ~~the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes~~ or other entity that makes, or accepts

anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a major purpose ~~expenditures for the purpose of influencing or attempting to influence~~ to support or oppose the nomination or election of ~~any candidate at any election, or which~~ one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a 'political committee' under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions ~~to repay loans or cover a deficit,~~ or ~~which~~ makes expenditures ~~to satisfy obligations of an election already held. The term includes, without limitation, any political party's State, county or district executive committee.~~ or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report."

Section 1.(b) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(7c) The term 'election cycle' means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, 'election cycle' means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year."

Section 1.(c) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.34A. Presumptions.**

In any proceeding brought pursuant to this Article in which a presumption arises from the proof of certain facts, the defendant has the burden of offering some evidence to rebut the presumption. The State bears the ultimate burden of proving the essential elements of its case."

Section 1.(d) G.S. 163-278.16(a) reads as rewritten:

"(a) Except as provided in G.S. 163-278.6(14) and G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee."

-- REDEFINING "CONTRIBUTION" AND "EXPENDITURE"; DEFINING "INDEPENDENT EXPENDITURE"; AND CHANGING THE SPECIAL REPORTING REQUIREMENT FOR CONTRIBUTIONS AND INDEPENDENT EXPENDITURES.

Section 2.(a) G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, ~~from any person or individual,~~ whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a ~~contribution, in support of or in opposition to any candidate, political committee, referendum committee, or political party.~~ contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or ~~goods notwithstanding~~ goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum

committee. The term 'contribution' does not include an 'independent expenditure.'"

Section 2.(b) G.S. 163-278.6(9) reads as rewritten:

"(9) The terms 'expend' or 'expenditure' mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, ~~from any person or individual,~~ whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, ~~in support of or in opposition to~~ to support or oppose the nomination, election, or passage of ~~any candidate, political committee, referendum committee, or political party.~~ one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term 'expenditure' also includes any payment or other transfer made by a candidate, political committee, or referendum committee. The special definition of 'expenditure' in G.S. 163-278.12A applies only in that section."

Section 2.(c) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(9a) The term 'independently expend' or 'independent expenditure' means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term 'independent expenditure' applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes."

Section 2.(d) G.S. 163-278.12 reads as rewritten:

"**§ 163-278.12. ~~Contributions and expenditures by an individual other than a candidate.~~ Special reporting of contributions and independent expenditures.**

(a) Subject to G.S. 163-278.16(f) and 163-278.14, ~~it shall be permissible for an individual other than a candidate to~~ individuals and other entities not otherwise prohibited from doing so may make ~~contributions or expenditures in support of, or in opposition to, any candidate, political committee, or referendum committee other than by contribution to a candidate, political committee, or referendum committee.~~

independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes ~~contributions or expenditures, other than by contribution to a candidate, political committee, or referendum committee,~~ independent expenditures in excess of one hundred dollars ($100.00), ~~then, within 10 days after making such a contribution or expenditure, he~~ that individual or entity shall file a statement of such ~~contribution or~~ independent expenditure with the ~~Board in accordance with the terms and conditions of G.S. 163-278.11.~~ appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars ($100.00) to the entity filing the report if the donation was made for the purpose of furthering the reported independent expenditure or contribution.

(d) Contributions or expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or expenditures affect, whichever occurs earlier."

-- REDEFINING THE TERM "CANDIDATE".

Section 3. G.S. 163-278.6(4) reads as rewritten:

"(4) The term 'candidate' means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, ~~or~~ has otherwise qualified as a candidate in a manner authorized by ~~law.~~ law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held."

-- REMOVING THE TERM "POLITICAL PURPOSE".

Section 4.(a) G.S. 163-278.6(16) is repealed.

Section 4.(b) G.S. 163-278.16(g) reads as rewritten:

"(g) All printed matter ~~for a political purpose~~ from a political party or political committee which ~~identifies a candidate that party or committee is opposing~~ opposes the nomination or election of a clearly identified candidate shall indicate in type no

smaller than 12 point the name of the political party or political committee and the name of the candidate that is intended to benefit from the printed matter."

Section 4.(c) G.S. 163-278.36 reads as rewritten:

"**§ 163-278.36. Elected officials to report funds.**

All ~~contributions~~ donations to, and all ~~expenditures~~ payments from any 'booster fund,' 'support fund,' 'unofficial office account' or any other similar source ~~which are~~ made ~~to, in behalf of,~~ or used in support of ~~any person holding~~ an individual's candidacy for elective office, or in support of an individual's duties and activities while in an elective office ~~for any political purpose whatsoever during his term of office~~ shall be deemed contributions and expenditures as defined in this Article and shall be reported as contributions and expenditures as required by this Article. The ~~annual report~~ reports due in January and July of each year shall show the balance of each separate fund or account maintained on behalf of the elected office holder."

Section 4.(d) G.S. 163-278.19(a) reads as rewritten:

"(a) Except as provided in ~~G.S. 163-278.19(b),~~ subsections (b), (d), (e), and (f) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

(1) To make any contribution to a candidate or political committee ~~or expenditure~~ (except a loan of money by a national or State bank or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association laws and regulations and in the ordinary course of business) ~~in aid or in behalf of or in opposition to any candidate or political committee in any election or for any political purpose whatsoever;~~ or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;

(2) To pay or use or offer, consent or agree to pay or use any of its money or property ~~for or in aid of or in opposition to any candidate or political committee or for or in aid of any person, organization or association organized or maintained for political purposes, or for or in aid of or in opposition to any candidate or political committee or for any political purpose whatsoever; and~~ for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or

(3) To ~~reimburse~~ compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified

political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof."

-- PERMITTING CONTRIBUTIONS AND INDEPENDENT EXPENDITURES BY NONBUSINESS CORPORATIONS; REMOVING REDUNDANT STATUTES CONCERNING CORPORATE AND INSURANCE COMPANY CONTRIBUTIONS; AND MAKING CONFORMING CHANGES.

Section 5.(a) G.S. 163-278.19 is amended by adding a new subsection to read:

"(f) This section does not prohibit a contribution or independent expenditure by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year."

Section 5.(b) G.S. 163-269 and G.S. 163-270 are repealed.

Section 5.(c) G.S. 163-278.13 reads as rewritten:

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

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

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

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

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee

may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.

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

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

Section 5.(d) G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120-47.1(7), or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

Section 5.(e) G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and domestic.**

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

-- CLARIFYING WHAT IS COVERED BY ARTICLE 22A AND WHAT IS ACTIVITY THAT CONSTITUTES INDIRECT CONTRIBUTIONS BY CORPORATIONS, ETC.

Section 6.(a) Part 1 of Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and do not apply to primaries and elections for federal offices or offices in other States. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices.

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

Section 6.(b) G.S. 163-278.19 is amended by adding a new subsection to read:

"(a1) A transfer of funds shall be deemed to have been a contribution or expenditure made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office."

-- MERGING THE FIRST QUARTER REPORT AND THE PRE-PRIMARY REPORT.

Section 7.(a) G.S. 163-278.9(a)(2) is repealed.

Section 7.(b) G.S. 163-278.9(a)(5a) reads as rewritten:

"(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except ~~that the~~ that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be filed; and

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed."

Section 7.(c) This section becomes effective January 1, 2000, and applies to all reports due on or after that date.

Section 8. This act is effective when it becomes law.

HOUSE BILL 921:
Campaign Finance Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Baddour, Alexander, Bonner
Date:	April 27, 1999	**Summary by:**	William R. Gilkeson
Version:	Third Edition		Staff Attorney

House Bill 921 makes several changes to the N.C. Campaign Finance Act designed to restore it to enforceability. The decision of N.C. Right to Life, Inc. v. Bartlett, issued by the 4th Circuit Court of Appeals in February, invalidated as overbroad North Carolina's definition of "political committee." That definition is key to enforcement of the whole statute. The Court also invalidated as overbroad the State's ban on contributions and expenditures by corporations and unions. Both invalidated statutes, the Court said, contained provisions that were constitutionally acceptable. But because they went too far, the Court said in effect that they could not be enforced at all until they were narrowed. The bill attempts to do that narrowing so the statutes can be enforced again against their legitimate objects.

1. **Redefining "Political Committee."** To narrow the definition, the bill says a group is a political committee if it has at least one of the following characteristics:
   - Is controlled by a candidate;
   - Is a political party or is controlled by a party;
   - Is set up by a corporation, other business entity, union, or professional association as a connected political committee;
   - Has as a major purpose "to support or oppose the nomination or election of a clearly identified candidate." (That term includes supporting or opposing candidates of a clearly identified political party.)

   The presumption is raised that a group has as a major purpose to support or oppose, etc., if the group expends more than $3,000 during an election cycle to support or oppose, etc. This presumption is rebuttable.

2. **Redefining Terms Related to Political Committee; Special Reporting.** The bill redefines the terms "contribution" and "expenditure" to conform to the current thinking of the courts. It adds a new definition of "independent expenditure," a payment that supports or opposes the nomination or election of a candidate, but is not made in consultation with a candidate. Current law says an individual may make independent expenditures but must report them if they exceed $100. The bill extends that requirement to other entities that may make independent expenditures (i.e., non-business corporations and groups that don't meet the significant purpose threshold to be a full-blown political committee). If the entity is not just an individual, it must also report all its contributions over $100. It must also report contributions made to it if they were made for the purpose of furthering the group's contribution or expenditure. The reports must be made within 30 days, or at least 10 days before an election, whichever occurs first.

3. **Redefining the Term "Candidate."** The current definition of "candidate" is limited to those who have filed their notice of candidacy. Because the bill bases the key definitions on supporting or opposing the nomination or election of a clearly identified "candidate," the current definition would not always work. The bill extends the definition of "candidates" to include those who raise or spend (or authorize others to do so) "for the purpose of bringing about that individual's nomination or election to office."

4. **Removing the Term "Political Purpose."** "Political purpose" is a term in North Carolina's law that the court found to be overly broad. A computer search found that the term is rarely used. The bill repeals the term and replaces it where it was found with the "support or oppose the nomination or election of" concept.

5. **Permitting Contributions and Independent Expenditures by Non-Business Corporations.** The court held that the State's statute that bans contributions and expenditures by corporations (as well as other business entities, unions, and professional associations) is overbroad. The court said the problem is that the law has no exception for non-business, idea-oriented corporations such as it found N.C. Right to Life, Inc., to be. The bill allows those special non-business corporations to make both contributions and expenditures. It defines the special corporation as one that has all of the following characteristics:
   - Has as an express purpose to promote social, educational, or political ideas and not to generate business income.
   - Does not have shareholders that have an economic interest in its assets and earnings.
   - Not formed by a business corporation (or other business entity or union, etc.) and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than 10 percent in a calendar year.

6. **Merging the 1st Quarter and the Pre-Primary Reports.** Now, candidates and political committees must make a report at least 10 days before a primary if they are in a primary. If they are not in a primary, they do not have to make that report. Everyone must make quarterly reports. The first quarter report is due seven working days after the first of April. So a candidate who is in a primary must make a quarterly report and then two weeks later file a pre-primary report. The bill eliminates the pre-primary report. So that last minute disclosure is not lost, the 1st quarter report deadline is moved to 10 days before the primary. The effect is to merge the 1st quarter and the pre-primary reports.

7. **Clarifying What the N.C. Campaign Finance Law Covers and What Constitutes Indirect Contributions by Corporations.** This clarifies that the Campaign Finance Law applies only to elections for North Carolina offices and not elections for federal offices and offices in other states. The act regulates non-North Carolina entities only as their actions affect elections for North Carolina offices. This section also addresses the situation in which a business corporation, union, etc., forbidden by North Carolina law to put money into elections for North Carolina offices, circumvents that prohibition by sending money through an account of an outside organization – such as a national party's "soft money" account – with the understanding that the money or some replacement for the money will find its way back into the North Carolina system, perhaps through the State party. The bill says that such a practice is an indirect contribution or expenditure.

The bill will go into effect when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1005

Short Title: Year 2000 Liability Limitations. (Public)

Sponsors: Senators Hoyle; Albertson, Allran, Ballantine, Carter, Clodfelter, Forrester, Kerr, Lee, Martin of Pitt, Metcalf, Perdue, and Plyler.

Referred to: Judiciary I.

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 55 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 18.

"Year 2000 Liability and Damages.

"**§ 55-18-01. 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 economic losses as a result of another's fault or negligence. This Article does not limit enforcement of laws, regulations, or permits by State or local government bodies or agencies.

"§ 55-18-02. 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 contractural 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.

"§ 55-18-03. 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 not in privity of contract with such person.

(2) No person shall be liable to any person who is not a person to whom an express warranty has been extended by such person.
(3) In the case of a trust, no person shall be liable to any person who is not a beneficiary of a trust administered by such person.
(4) 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 a Year 2000 problem to the extent such Year 2000 problem was caused by a third party.
(5) 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 a third party's Year 2000 problem.
(6) No employee, officer, or director shall be liable to any person in his or her capacity as such.
(7) No person shall be liable for consequential or punitive damages.
(8) 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 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-PCSSE-010
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1005
THIS IS A DRAFT 26-APR-99 22:58:12
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.

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 contractural 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.

SENATE BILL 1005:
Year 2000 Liability Limitations.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hoyle
Date:	April 27, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S1005-CSRU-001		

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 made a good faith effort in its operations to prevent the occurrence of a Year 2000 problem, no person shall be liable:

1. To any person the person is was not in 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 exceed the actual damages that are the direct result of the Year 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.

EFFECTIVE DATE: The bill becomes effective when it becomes law and applies to actions commenced on or after that date.

(1)

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-27-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Scott Hamrick	NCATL
Benton Craig	NCATL
David Simmons	ZPA, PA
Paul Stock	NC Bankers Assn.
Randy Monchick	AOC
PSP	
Marian Dodd	League of Women Voters NC
John Chapman	ASSE
Arlene Edwards	ASSE
Jerry Garner	ASSE
Joe McClees	ASSE
[illegible]	ASSE
Kristin Dantzler	Intern
Amy Fullbright	Hunton & Williams
Sandy Sands	CUCSR

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
Julia White	ProTem
Jama Reed	State Farm Insurance
Mark Taylor	State Farm Mgs. 6
Bill Truitt	Young Moore + Henderson PA
Hal Miller	NCACCT
Melissa Lovell	DOJ
Charles Heatherly	DST
Bernard Allen	SOS
Lori Anne Harris	LATHA

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 27, 1999

The Senate Judiciary I Committee met on April 27, 1999 at 3:15 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Wellons to explain **Senate Bill 1055 – AN ACT TO PROHIBIT THE USE OF A COURT REPORTING SERVICE THAT HAS AN INTEREST WHEN A DEPOSITION IS TAKEN.**

Senator Wellons moved to amend the bill on Page 1, Line 18. The motion carried by a majority voice vote. (Amendment attached.)

Senator Lucas moved to give Senate Bill 1055 a favorable report as amended and roll it into a Committee Substitute. The motion carried by a majority voice vote.

Senator Clodfelter was recognized to explain **Senate Bill 1058 – AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCLUDE COMPONENTS OF THE STATE BUILDING CODE IN THE EXAMINATION OFFERED BY THE BOARD AND GRANTING THE BOARD GREATER AUTHORITY WHEN DISCIPLINING LICENSEES WHO VIOLATE THE LAWS RELATED TO GENERAL CONTRACTOR LICENSURE.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 1058 for discussion. The motion carried by a majority voice vote.

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 1058 a favorable report. The motion carried by a majority voice vote.

Senator Hoyle was recognized to continue the explanation of the Proposed Committee Substitute to **Senate Bill 1005 – AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR 2000 PROBLEMS.**

Senator Ballantine moved to give the Proposed Committee Substitute to Senate Bill 1005 a favorable report. The motion carried by a majority voice vote.

Senator Allran was recognized to explain **Senate Bill 120 – AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.**

Senator Allran moved to adopt a Proposed Committee Substitute to Senate Bill 120 for discussion. The motion carried by a majority voice vote.

Master Sergeant Julius Storch was recognized to tell his personal story of the loss of his son due to the underage purchase of beer. No charges were ever brought against the seller.

Senator Lucas moved to give the Proposed Committee Substitute for Senate Bill 120 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, April 27, 1999
TIME: 3:15 p.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 120	Up some Underage Sales Penalties	Allran
SB 1005	Year 2000 Liability Limitations	Hoyle
SB 1055	Certain Court Report Services	Wellons
SB 1058	General Contractors Licensure	Clodfelter

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 27, 1999

3:15 p.m.

SB 120	Up Some Underage Sales Penalties	Allran
SB 1005	Year 2000 Liability Limitations	Hoyle
SB 1055	Certain Court Report Services	Wellons
SB 1058	General Contractors Licensure	Clodfelter

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1055

Short Title: Certain Court Report Services. (Public)

Sponsors: Senator Wellons.

Referred to: Judiciary I.

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 contracts entered into on or after that date.

SENATE BILL 1055:
Certain Court Report Services

BILL ANALYSIS

Committee: Senate Judiciary 1
Date: April 26, 1999
Version: 1

Introduced by: Senator Wellons
Summary by: Jo B. McCants
Committee Co-Counsel

SUMMARY: This bill prohibits a court reporting service from taking a deposition when the contract for the court reporting service is between a person authorized to take depositions, an attorney, a party to the action, or any party having a financial interest in the action. The bill does not apply to contracts for services to a governmental body or contracts that relate to a particular action pending before a court or administrative agency. The act becomes effective October 1, 1999.

BILL ANALYSIS:

Currently, a person who is a relative, employee, attorney of any of the parties, or is a relative or employee of the attorney, or has a financial interest in the action is prohibited from taking a deposition. This bill expands the prohibition to a court reporting service that has a contract with the person authorized to take a deposition, an attorney, a party to the action, or a party who has a financial interest in the action.

The act becomes effective October 1, 1999, and applies to contracts entered on or after that date

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 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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-27-99

S. B. No. 1055 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Wellons

moves to amend the bill on page 1, line 18

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

depositions taken on or after October 1, 1999.

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1058

Short Title: General Contractors Licensure. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCLUDE COMPONENTS OF THE STATE BUILDING CODE IN THE EXAMINATION OFFERED BY THE BOARD AND GRANTING THE BOARD GREATER AUTHORITY WHEN DISCIPLINING LICENSEES WHO VIOLATE THE LAWS RELATED TO GENERAL CONTRACTOR LICENSURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-10(b) reads as rewritten:

"(b) The Board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of matters covered on the level I, II, and III examinations administered by the Department of Insurance for the licensure of building inspectors, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of the applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in ~~said~~ the certificate, which may be limited into five classifications as the common use of the terms are known -- that ~~is,~~ is:

(1) Building contractor, which shall include private, public, commercial, industrial and residential buildings of all ~~types;~~ types.

(1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to ~~G.S. 143-138;~~ G.S. 143-138.

(2) Highway ~~contractor;~~ contractor.

(3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:

a. Water and sewer mains and water service lines and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping ~~stations;~~ stations.

b. Water and wastewater treatment facilities and appurtenances ~~thereto;~~ thereto.

c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the ~~customer;~~ customer.

d. Public communication distribution ~~facilities; and~~ facilities.

e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor ~~qualifies, and~~ qualifies.

(4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected."

Section 2. G.S. 87-11(a) reads as rewritten:

"(a) The Board shall have the power to ~~revoke the certificate of license of any general contractor licensed hereunder who~~ refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, ~~incompetency~~ incompetency, or misconduct in the practice of his or her profession, or willful violation of any ~~provisions~~ provision of this Article. The Board shall also have the power to revoke, suspend, or otherwise restrict a certificate of license held by a

copartnership or corporation, or any other combination or organization, if the person who obtained the license for the copartnership or corporation, as provided in G.S. 87-10(c), committed any act in violation of the provisions of this section, and the Board may take disciplinary action against the individual license held by that person.

(a1) Any person may prefer charges of ~~such~~ fraud, deceit, ~~negligence~~ negligence, or misconduct against any general contractor licensed ~~hereunder; such~~ under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. ~~Such~~ The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1058
Proposed Committee Substitute S1058-PCS3793-RU

Short Title: General Contractors Licensure. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCLUDE COMPONENTS OF THE STATE BUILDING CODE IN THE EXAMINATION OFFERED BY THE BOARD AND GRANTING THE BOARD GREATER AUTHORITY WHEN DISCIPLINING LICENSEES WHO VIOLATE THE LAWS RELATED TO GENERAL CONTRACTOR LICENSURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-10(b) reads as rewritten:

"(b) The Board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of relevant matters contained in the North Carolina State Building Code, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of the applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in ~~said~~ the certificate, which may be limited into five classifications as the common use of the terms are known -- that ~~is,~~ is:

(1) Building contractor, which shall include private, public, commercial, industrial and residential buildings of all ~~types;~~ types.

(1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to ~~G.S. 143-138;~~ G.S. 143-138.

(2) Highway ~~contractor;~~ contractor.

(3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:

a. Water and sewer mains and water service lines and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping ~~stations;~~ stations.

b. Water and wastewater treatment facilities and appurtenances ~~thereto;~~ thereto.

c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the ~~customer;~~ customer.

d. Public communication distribution ~~facilities; and~~ facilities.

e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor ~~qualifies, and~~ qualifies.

(4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected."

Section 2. G.S. 87-11(a) reads as rewritten:

"(a) The Board shall have the power to ~~revoke the certificate of license of any general contractor licensed hereunder who~~ refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, ~~incompetency~~ incompetency, or misconduct in the practice of his or her profession, or willful violation of any ~~provisions~~ provision of this Article. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a

qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a1) Any person may prefer charges of ~~such~~ fraud, deceit, ~~negligence~~ negligence, or misconduct against any general contractor licensed ~~hereunder; such~~ under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. ~~Such~~ The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes."

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

SENATE BILL 1058:
General Contractors Licensure.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 27, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S1058-PCS3793-RU		

SUMMARY: ***Senate Bill 1058 would amend the General Contractors licensing law to require the Board of General Contractors to test applicants on relevant matters in the State Building Code and to authorize the Board to refuse to issue or renew, revoke, suspend or restrict a potential general contractor or a licensed general contractor for fraud, gross negligence, incompetency, or misconduct in the practice, and also to authorize the Board to restrict the ability of a person to act as the qualifying license for business entity for any of these violations.***

CURRENT LAW: Current law does not require that an applicant for a general contractor's license be tested on the State Building Code. Current law only authorizes the Board to revoke the license of a general contractor for fraud in getting the license and gross negligence, incompetency, or misconduct in the practice.

BILL ANALYSIS: Section 1 of the bill amends G.S. 87-10(b) to require the State Licensing Board for General Contractors to test for relevant matters in the North Carolina State Building Code as part of the licensing examination.

Section 2 amends G.S. 87-11(a), the authority of the Board to discipline a licensee, to broaden the types of punishment the Board may impose and to permit the Board to take certain disciplinary actions without taking the person's license. The Board is given the power to refuse to issue or renew a license, or revoke, suspend, or restrict a general contractor's license, or to issue a reprimand or take other disciplinary action if the general contractor is guilty of fraud or deceit in obtaining the license, or is guilty of gross negligence, incompetency, or misconduct in the practice of general contracting. The Board also is being give the authority to revoke, suspend or otherwise restrict the ability of any person to act as the licensee for a business entity to act as a general contractor if the person violated this section and the Board took disciplinary action against the person.

EFFECTIVE DATE: The bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1005-PCSSE-010
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1005
THIS IS A DRAFT 26-APR-99 22:58:12
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.

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 contractural 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.

SENATE BILL 1005:
Year 2000 Liability Limitations.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hoyle
Date:	April 27, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S1005-CSRU-001		

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 made a good faith effort in its operations to prevent the occurrence of a Year 2000 problem, no person shall be liable:

1. To any person the person is was not in 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 exceed the actual damages that are the direct result of the Year 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.

EFFECTIVE DATE: The bill becomes effective when it becomes law and applies to actions commenced on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1005

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

S1005-ARU-001 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
S1005-PCSSE-010

Senator_____

moves to amend the bill on page 3, lines 39 through 41, by rewriting the lines to read:

"Section 2. This act is effective when it becomes law, expires on January 1, 2001, and applies to claims arising on or after the effective date and before January 1, 2001."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED ✓

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S120-CSRU-003
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 120
THIS IS A DRAFT 13-OCT-99 15:16:02
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Up Some Underage Sales Penalties. (Public)

Sponsors:

Referred to:

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.

Whereas, underage drinking has always been a matter of grave concern for the General Assembly; and

Whereas, Parents Who Care About Underage Drinking in Catawba County became involved and concerned about recent incidences of death and hospitalization due to alcohol poisoning of teens in their county; and

Whereas, studies in North Carolina indicate:

(1) 40% of North Carolina high school students acknowledge consuming alcohol in the previous 30 days.

(2) 12% of the State's 11th graders and 18% of the State's 12th graders acknowledge driving a motor vehicle after drinking in the previous 30 days.

(3) Over 50% of North Carolina high school students who currently drink began drinking by age 13.

(4) 79% of high school students say that obtaining alcohol by having an adult buy it for them is very easy and 60% say that obtaining alcohol from the homes of other teens or adults is also very easy.

(5) 66% of North Carolina teens believe their peers are getting alcohol from someone over 21 who is buying it for them, and 80% of the time it is an acquaintance rather than a stranger that buys it.
(6) 30% of North Carolina teens say they know a store in their community where someone under 21 can easily buy beer.
(7) 19% of 17 year-olds report they have attended a party where alcohol was supplied by parents.
(8) In 1996, more than 200 North Carolina youth were hospitalized for primary alcohol-related diagnoses; and

Whereas, young people who begin drinking before age 15 are more than twice as likely to develop alcohol abuse as those who begin drinking at age 21; and

Whereas, underage drinking is a matter of statewide concern; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-302A. Penalties for certain offenses related to underage persons.**

(a) A violation of G.S. 18B-302(a) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars ($250.00) as authorized by G.S. 15A-43(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars ($1,000) as authorized by G.S. 15A-43(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(b) A violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-43(b)(9) and a

requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars ($1,000) as authorized by G.S. 15A-43(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(c) In addition to the punishments imposed under this section, the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505."

Section 2. This act becomes effective December 1, 1999 and applies to offenses committed on or after that date.

SENATE BILL 120:
Up Some Underage Sales Penalties

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Allran
Date:	April 22, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S120-CSRU-003		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 120 would establish minimum Class 1 misdemeanor punishments for persons who sell or give alcoholic beverages to a person under the age of 21 or who purchases and aids and abets a person under the age of 21 in the purchase or possession of alcoholic beverages.***

CURRENT LAW: Current law makes it a Class 1 misdemeanor for a person to sell or give alcoholic beverages to a person under 21 or to purchase and aid and abet a person under 21 in purchasing or possession alcoholic beverages. Under current law no minimum fine or community services required but a judge may impose a fine and community service up to an amount determined in the discretion of the court.

BILL ANALYSIS: Section 1 of the bill creates a new section to provide for specific, minimum mandatory punishment for persons convicted of violated certain specified offenses involving the sell or gift to or possession of alcoholic beverages by persons under age 21.

Subsection (a) establishes that minimum punishment for a violation of the prohibition on selling or giving alcoholic beverages to a person under 21 is as follows:

For a first offense as a condition of probation the person shall be given a minimum fine of $250 and must complete at least 25 hours of community service.

For a second or subsequent violations of this offense, the minimum fine shall be $1,000 and 150 hours of community service.

Subsection (b) establishes that minimum punishment for a violation by a person 21 or older in purchasing and aiding and abetting a person under 21 in purchasing or possession alcoholic beverages is as follows:

For a first offense as a condition of probation the person shall be given a minimum fine of $500 and must complete at least 25 hours of community service.

For a second or subsequent violations of this offense, the minimum fine shall be $1,000 and 150 hours of community service.

EFFECTIVE DATE: The bill becomes effective December 1, 1999 and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

REVISED REPORT

Wednesday, April 28, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **129** Repeal UCC Article on Bulk Transfers
Sequential Referral: None
Recommended Referral: None

S.B. **908** Revise UCC Warehouse Receipts
Sequential Referral: None
Recommended Referral: None

S.B. **1021** Computerized Evidence Amendments
Sequential Referral: None
Recommended Referral: None

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

S.B. **120** Up Some Underage Sales Penalties
Draft Number: PCS 8606
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **292** Sup. Ct. Crim. Case Docketing Plan
Draft Number: PCS 1725
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1005** Year 2000 Liability Limitations
Draft Number: PCS 7675
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1012** Medical Malpractice Pleadings

Draft Number:	PCS 6670
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1055** Certain Court Report Services

Draft Number:	PCS 7677
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 8

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	Zebulon D. Alley, PA
[illegible]	NCURA
[illegible]	Pace Reporting Service
[illegible]	~~Sprint~~
[illegible]	NC Bar Association
[illegible]	Household Financial Group
[illegible]	LB Assoc.
[illegible]	NC Dept. of State Treasurer
[illegible]	NCLM
[illegible]	NCATL
[illegible]	NCAFT
[illegible]	Wachovia
[illegible]	NC Bankers
[illegible]	NCRMA
[illegible]	Electricities
[illegible]	NCRMA
[illegible]	BCBS

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Steven Lentz	Brooks, Pierce
Karen Carpenter	PCS
Cam Cowan	BPMH
Hugh Tilson	NCHA
VL Wyche Bode	NSBA
Amy Fullbright	Hunton & Williams
John Palinchak	AT&T
Nancy Thompson	NCCBA
Ron Elkins	GNANC
Benny Gardner	NC HC
Walter Price	Chamber Chamber
Stacy Flannery	NCNCFA
PERRI MORGAN	NFIB
Barbara A Martin	Gov. Inst on Alcohol & Subs. Inc
Ann Fulton	ABC Commission

VISITOR REGISTRATION SHEET

Name of Committee ______________________ Date ________

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mark Ezzell	Gov. Institute Alcohol/Substance Abuse
Marvin Waters	NC ABC Commission

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: **Wednesday, April 28, 1999**
TIME: **1:00 p.m. - "until"**
ROOM: **1027**

The following bills or resolutions will be considered:

SB 129	Repeal UCC Article on Bulk Transfers	Hartsell
SB 244	Unclaimed Property Act	Hartsell
SB 788	Natural Heritage Fund/Private Grants	Clodfelter
SB 794	Exempt Tobacco Settlement Payments	Wellons
SB 897	Safety Professionals	Dalton
SB 908	Revise UCC Warehouse Receipts	Albertson
SB 973	Regulate Used Motor Vehicle Parts	Weinstein
SB 1012	Medical Malpractice Pleadings	Cooper
SB 1021	Computerized Evidence Amendments	Clodfelter
SB 1023	Expand Magistrates' Authority	Clodfelter
SB 1040	Hospital Governing Authority	Rand

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - April 28, 1999

1:00 p.m.

SB 129	Repeal UCC Article on Bulk Transfers	Hartsell
SB 244	Unclaimed Property Act	Hartsell
SB 788	Natural Heritage Fund/Private Grants	Clodfelter
SB 794	Exempt Tobacco Settlement Payments	Wellons
SB 897	Safety Professionals	Dalton
SB 908	Revise UCC Warehouse Receipts	Albertson
SB 973	Regulate Used Motor Vehicle Parts	Weinstein
SB 1012	Medical Malpractice Pleadings	Cooper
SB 1021	Computerized Evidence Amendments	Clodfelter
SB 1023	Expand Magistrates' Authority	Clodfelter
SB 1040	Hospital Governing Authority	Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 129

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

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

February 18, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

Applicability of the article on investment securities. (G.S. 25-8-110).

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

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

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

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

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

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

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

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

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

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

Section 7. This act becomes effective October 1, 1999. Rights and obligations arising under Article 6 of Chapter 25 of the General Statutes and G.S. 25-9-111 before the effective date of this act remain valid and may be enforced as though those statutes had not been repealed.

SENATE BILL 129: REPEAL UCC ARTICLE ON BULK TRANSFERS

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Hartsell
Date:	March 16, 1999	**Summary by:**	O. Walker Reagan
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 129 would repeal Article 6 - UCC Bulk Transfers of Chapter 25, the Uniform Commercial Code. It is a recommendation of the General Statutes Commission.***

CURRENT LAW: Article 6 of Chapter 25 of the General Statutes is the Bulk Transfers article of the Uniform Commercial Code. This Article provides that where there is a transfer of the personal property of a business, not in the ordinary course of the business, of a major part of the business enterprise's materials, supplies, merchandise or inventory, the assets purchased by the buyer are protected from certain claims of the seller's creditors if the provisions of the Article are complied with. These provisions require the seller to give the buyer a schedule of the property being transferred and a list of the seller's creditors. These provisions also require the buyer to give notice to the seller's creditors at least 10 days prior to the date of sale that the assets will be sold. This notice also has to state whether the debts of the seller will be paid when they become due as a result of the sale.

BILL ANALYSIS: Section 1 of Senate Bill 129 repeals Article 6 of Chapter 25, and Sections 2, 3. and 4 make conforming changes to other sections of Chapter 25, Uniform Commercial Code. Section 5 amends Farm Machinery Franchises law to delete a reference to the Bulk Transfers law. Section 6 deletes a reference in the Auctions and Auctioneers law to an exception for bulk transfer sales.

EFFECTIVE DATE: The bill becomes effective October 1, 1999, but the rights and obligations under the current law that arise before October 1, 1999 remain valid and maybe enforced as if this law had not been repealed.

A Few Facts About
REVISED ARTICLE 6 OF THE UCC

Purpose: To provide states with the option of repealing or revising current Article 6 of the UCC.

Origin: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1989.

Endorsed by: American Bar Association

Adoptions of Revised UCC6:

Arizona
California
District of Columbia
Indiana
Virginia

Repeals of UCC6:

Alabama
Alaska
Arkansas
Colorado
Connecticut
Delaware
Florida
Hawaii
Idaho
Illinois
Iowa
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Michigan
Minnesota
Mississippi
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
South Dakota
Tennessee
Texas
Utah
Vermont
Washington
West Virginia
Wyoming

1999 Introductions to Repeal UCC6:

1999 Introductions to Revise UCC6:

For any further information regarding Article 6 of the Uniform Commercial Code, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/99)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: March 15, 1999

RE: Senate Bill 129 (Repeal UCC Article on Bulk Transfers)

Senate Bill 129 repeals Article 6 of the Uniform Commercial Code, regulating bulk transfers, and makes conforming amendments to the Uniform Commercial Code ("UCC") and other sections of the General Statutes. Article 6, Bulk Transfers, was enacted in North Carolina as part of the UCC in 1965 and has been amended only once since its enactment.

Article 6 was revisited by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 1989. The Conference and the Institute concluded that Article 6 has become obsolete, that changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary. Both bodies therefore decided to withdraw their support for Article 6 and encourage those states that have enacted the Article to repeal it. Since that decision was made, 38 states have repealed Article 6 or its equivalent.

The General Statutes Commission circulated to its mailing list the proposal to repeal Article 6 and received no negative comments. Repeal is supported by the North Carolina Bar Association.

Bulk sales laws were originally drafted in response to a fraud perceived to be common around the turn of the century where a merchant would acquire stock in trade on credit, then sell the entire inventory ("in bulk") and abscond with the proceeds, leaving creditors unpaid. Article 6 in turn was drafted as a uniform replacement to individual state bulk sales laws. The Article imposes several duties on a buyer in bulk, primarily including the duty to give ten days' notice to the seller's creditors of the impending bulk transfer. It requires compliance even when there is

no reason to believe that the seller is conducting a fraudulent transfer and imposes strict liability for noncompliance. Failure to comply with the provisions renders the transfer ineffective as to the seller's creditors, even when the buyer has acted in good faith.

Modernization in the business and legal contexts in which sales are conducted have made this type of regulation of bulk sales unnecessary. Creditors are better able to make informed decisions about whether to extend credit. Changes in technology since the early 1900s have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively small cost. Creditors no longer face the choice of extending unsecured credit or no credit at all. Retaining an interest in inventory to secure its price has become relatively simple and inexpensive under Article 9 of the UCC - adopted in every state and the District of Columbia. Creditors also have greater opportunity to collect their debts. The adoption of state long-arm statutes have greatly improved the possibility of obtaining personal jurisdiction over a debtor who flees to another state. Moreover, if a bulk sale is fraudulent, creditors have remedies under the Uniform Fraudulent Transfer Act, enacted by the North Carolina General Assembly in 1997. There appears to be no evidence that in today's economy, fraudulent bulk sales are frequent enough, or engender credit losses significant enough, to require regulation of all bulk sales, particularly since the problem bulk sales laws are designed to address is now rare.

Moreover, in view of the burden Article 6 places on the buyer, benefit to the seller's creditors in a sale in which the buyer complies with the Article is slight. All the creditors receive is ten days' notice of the sale. The Article places no responsibility on the buyer to see that the seller's creditors are actually paid. Practitioners in this field also reported to the General Statutes Commission that the common practice in bulk sales is to draft the transfer documents in such a way as to eliminate the need for compliance with Article 6.

In light of these reasons, the General Statutes Commission recommends that the North Carolina General Assembly repeal UCC Article 6, Bulk Transfers.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 908

Short Title: Revise UCC Warehouse Receipts. (Public)

Sponsors: Senators Albertson; Carpenter, Clodfelter, Harris, Hoyle, Kerr, Metcalf, Warren, and Weinstein.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT WAREHOUSEMEN DO NOT HAVE TO ISSUE WRITTEN RECEIPTS AS A PRECONDITION TO CREATING A LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-7-209 reads as rewritten:

"**§ 25-7-209. Lien of warehouseman.**

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever ~~deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods,~~ deposited, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for ~~a maximum amount specified on the receipt for charges other than those specified in~~

~~subsection (1), such as for money advanced and interest.~~ charges other than those specified in subsection (1) of this section, such as for money advanced and interest, but if a receipt is issued for the goods, such a security interest is not valid against third persons without notice unless the maximum amount thereof is conspicuously stated on the receipt. Such a security interest is governed by the article on secured transactions (article 9).

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under G.S. 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 908:
Revise UCC Warehouse Receipts.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Albertson
Date:	April 27, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 908 would amend Section 209 of Article 7 of the Uniform Commercial Code to permit a warehouseman to have a possessory lien on goods held for charges or expenses arising from other goods even it the charges are not stated on the warehouse receipt. The bill also permits the lien for other charges such as money advanced or interest, but this security interest is not valid against third parties without notice.

CURRENT LAW: Current law in G.S. 25-7-209(1) requires that any lien asserted on goods held for charges or expenses in relation to other goods whenever deposited must be stated in the receipt for the goods against which the lien applies. Current law in G.S. 25-7-209(2) limits the maximum amount of a security interest in goods for other charges not covered in subdivision (1) to the maximum amount that is stated on the receipt.

BILL ANALYSIS: This bill amends G.S. 25-7-209 in two ways. G.S. 25-7-209(1) is amended by deleting the requirement that a claim for charges and expenses in relation to other goods deposited with the warehouseman have to be stated in the receipt for the goods against which the lien is to be assert in order for the lien to be effective. The effect of this change is to give the warehouseman a lien on goods held for all money owed to the warehouseman for any goods currently or previously held. But this lien is not valid against third parties unless stated in the receipt.

This bill also amends G.S. 25-7-209(2) by deleting the requirement that a security interest in goods held for other charges such as money advanced and interest must appear on the receipt, and replaces that with language permitting a security interest without notice on the receipt for these other charges, but only permits this security interest against third parties where the receipt gave notice of the maximum amount a security interest could be claimed for these other charges. The effect of this change is to give the warehouseman a security interest in goods held as against the person on whose behalf the goods are being held for money advanced or interest without so stating on the receipt, but requires notice for the security interest to be valid as against third parties.

EFFECTIVE DATE: The bill becomes effective October 1, 1999. It is not clear if these changes apply to goods placed with a warehouseman prior to October 1, 1999 or just to goods placed with a warehouseman on or after October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1021

Short Title: Computerized Evidence Amendments. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING THE ADMISSIBILITY INTO EVIDENCE OF PUBLIC OR PRIVATE RECORDS MAINTAINED ON PERMANENT, NONERASABLE, MACHINE-READABLE MEDIA AND RELATING TO THE MAINTENANCE AND PRESERVATION OF PUBLIC RECORDS USING THOSE MEDIA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-45.1 reads as rewritten:

"**§ 8-45.1. Photographic reproductions admissible; destruction of originals.**

(a) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation, X ray or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 2. G.S. 8-45.3 reads as rewritten:

"**§ 8-45.3. Photographic reproduction of records of Department of Revenue.**

(a) The State Department of Revenue is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the Department, including tax returns required by law to be made to the Department, and said photographs, photocopies, or microphotocopies, when certified by the Department as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings and matters as the originals thereof would have been.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 3. G.S. 8-34 reads as rewritten:

"**§ 8-34. Copies of official writings.**

(a) Copies of all official bonds, writings, papers, or documents, recorded or filed as records in any court, or public office, or lodged in the office of the Governor, Treasurer, Auditor, Secretary of State, Attorney General, Adjutant General, or the State Department of Cultural Resources, shall be as competent evidence as the originals, when certified by the keeper of such records or writings under the seal of ~~his~~ the keeper's office when there is such seal, or under ~~his~~ the keeper's hand when there is no such seal, unless the court shall order the production of the original. Copies of the records of the board of county commissioners shall be evidence when certified by the clerk of the board under ~~his~~ the clerk's hand and seal of the county.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 4. G.S. 153A-436 reads as rewritten:

"**§ 153A-436. Photographic reproduction of county records.**

(a) A county may provide for the reproduction, by photocopy, photograph, microphotograph, or any other method of reproduction that gives legible and permanent copies, of instruments, documents, and other papers filed with the register of deeds and of any other county records. The county shall keep each reproduction of an instrument, document, paper, or other record in a fire-resistant file, vault, or similar container. If a duplicate reproduction is made to provide a security-copy, the county shall keep the duplicate in a fire-resistant file, vault, or similar container separate from that housing the principal reproduction.

If a county has provided for reproducing records, any custodian of public records of the county may cause to be reproduced any of the records under, or coming under, his custody.

(b) If a county has provided for reproducing some or all county records, the custodian of any instrument, document, paper, or other record may permit it to be removed from its regular repository for up to 24 hours in order to be reproduced. An instrument, document, paper or other record may be removed from the county in order to be reproduced. The board of commissioners may permit an instrument, document, paper, or other record to be removed for longer than 24 hours if a longer period is necessary to complete the process of reproduction.

(c) The original of any instrument, document, or other paper received by the register of deeds and reproduced pursuant to this Article shall be filed, maintained, and disposed of in accordance with G.S. 161-17 and G.S. 121-5. The original of any other county record that is reproduced pursuant to this Article may be kept by the county or disposed of pursuant to G.S. 121-5.

(d) If an instrument, document, or other paper received by the register of deeds is reproduced pursuant to this Article, the recording of the reproduction is a sufficient recording for all purposes.

(e) A reproduction, made pursuant to this Article, of an instrument, document, paper, or other record is as admissible in evidence in any judicial or administrative proceeding as the original itself, whether the original is extant or not. An enlargement or other facsimile of the reproduction is also admissible in evidence if the original reproduction is extant and available for inspection under the direction of the court or administrative agency.

(f) The provisions of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 5. G.S. 160A-490 reads as rewritten:

"**§ 160A-490. Photographic reproduction of records.**

(a) General Statutes 153A-436 shall apply to cities. When a county officer is designated by title in that Article, the designation shall be construed to mean the appropriate city officer, and the city council shall perform powers and duties conferred and imposed on the board of county commissioners.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 6. This act becomes effective December 1, 1999, with Sections 1, 2, and 3 applying to proceedings in the courts of this State pending on or after that date.

SENATE BILL 1021:
Computerized Evidence Amendments

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senator Clodfelter
Date:	April 28, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Counsel

SUMMARY: ***This bill would allow records of any business, institution, department or agency of the government that are kept in the regular course of business and stored on any form of permanent, computer-readable media, such as a CD-ROM, to be admissible into evidence in any judicial or administrative proceeding. The medium used to store the information must not be subject to erasure or alteration. The provisions of this bill would also apply to documents produced by the Department of Revenue, the Office of the Governor, Treasurer, Auditor, Secretary of State, Attorney General, Adjutant General, the Department of Cultural Resources, counties, and cities. The act becomes effective on December 1, 1999.***

BILL ANALYSIS:

Currently, documents kept in the regular course of business that are copied or reproduced by photographic, photostatic, microfilm, microcard, miniature photographic, or other process that accurately reproduces the original may be admitted into evidence as the original itself in any judicial or administrative proceeding. The introduction of a reproduced record does not preclude admission of an original. With regard to county and city records, current law requires that certain documents and any duplicate of such document be maintained in a secured manner. This bill would allow records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration, to be admissible into evidence. In addition, counties and cities will be required to maintain the computer-readable media in the same manner as other documents.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 244*

Short Title: Unclaimed Property Act/AB. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"**§ 116B-4. Claim for escheated property.**

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A.~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed.~~ The provisions of ~~G.S. 116B-38(b) and (c)~~ G.S. 116B-66(a), (c), (d), and (e) and G.S. 116B-67 shall apply to a claim under this ~~subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in ~~G.S. 116B-37,~~ G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47;~~ G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"§ 116B-8. Employment of persons with specialized skills or knowledge.

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate

legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"§ 116B-51. Short title.

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"§ 116B-52. Definitions.

In this Chapter:

(1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those

payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposit to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit

sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) '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.

(13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"**§ 116B-53. Presumptions of abandonment.**

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or

terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Gift certificate, three years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent (60%) of the certificate's face value;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, one year after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution.

"**§ 116B-54. Exclusion for forfeited reservation deposits.**

A forfeited reservation deposit is not abandoned property. For the purposes of this section the term 'reservation deposit' means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

"**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the administrator as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the

applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"**§ 116B-56. Rules for taking custody.**

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

a. The last known address of the person entitled to the property is in this State; or

b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to

be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge.

A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

"§ 116B-59. Notice by holders to apparent owners.

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"§ 116B-60. Report of abandoned property; certification by holders with tax return.

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the administrator by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of

Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"**§ 116B-61. Payment or delivery of abandoned property.**

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would not longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"**§ 116B-62. Preparation of list of owners by Treasurer.**

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars

($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"**§ 116B-63. Custody by State; recovery by holder; defense of holder.**

(a) In this section, payment or delivery is made in 'good faith' if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) a holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasure in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"**§ 116B-64. Income or gain accruing after payment or delivery.**

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"**§ 116B-65. Public sale of abandoned property.**

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) a purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"**§ 116B-66. Claim of another state to recover property.**

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

"**§ 116B-67. Claim for property paid or delivered to the Treasurer.**

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the

claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

"§ 116B-68. Action to establish claim.

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant.

"§ 116B-69. Election to take payment or delivery.

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

"**§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.**

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"**§ 116B-71. Periods of limitation.**

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than 10 years after the holder filed a report with the Treasurer in which the holder specifically identified or should have identified the property or gave express notice to the Treasurer of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

"**§ 116B-72. Requests for reports and examination of records.**

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice

required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess against a holder who willfully failed to report or who made a fraudulent report the cost of the examination at the rate of two hundred dollars ($200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, that should have been but was not reported.

"**§ 116B-73. Retention of records.**

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"**§ 116B-74. Enforcement.**

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry,

or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"§ 116B-76. Interest and penalties; waiver.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall

continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section , a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"**§ 116B-77. Agreement to locate property.**

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation in an amount greater than twenty-five percent (25%) of the actual value of the property recovered, or is otherwise unconscionable, is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

"**§ 116B-78. Transitional provisions.**

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"**§ 116B-79. Rules.**

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division.

The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the 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~~ 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."

Section 8. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or ~~29-15,~~ G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 9. G.S. 53-43.7(b)

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by the ~~lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(e).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(e);~~ G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him,~~ the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided,

however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S. 116B-74;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under G.S. 116B-72 and G.S. 116B-74, may include designation by general type or ~~class as authorized in G.S. 116B-39.~~ class."

Section 12. G.S. 116-209.3 reads as rewritten:

"**§ 116-209.3. Additional powers.**

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and

assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 244*
Proposed Committee Substitute S244-PCS6669-RU

Short Title: Unclaimed Property Act/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO THE ESCHEATS LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"**§ 116B-4. Claim for escheated property.**

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A.~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed.~~ The provisions of ~~G.S. 116B-38(b) and (e)~~ G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this ~~subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in ~~G.S. 116B-37,~~ G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47;~~ G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"**§ 116B-8. Employment of persons with specialized skills or knowledge.**

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep, management, sale and conveyance of property and

determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to ten percent (10%) of the final assessment."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"§ 116B-51. Short title.

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"§ 116B-52. Definitions.

In this Chapter:

(1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) '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.

(13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"**§ 116B-53. Presumptions of abandonment.**

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Gift certificate, three years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent (60%) of the certificate's face value;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, one year after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution.

"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, certain manufactured home buyer deposits, and certain credit balances.

(a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment

with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

(b) A gift certificate or electronic gift card is not unclaimed or abandoned property when the gift certificate or electronic gift card:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire;

(2) Bears no expiration date;

(3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina; or

(4) Is a prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6.

(c) A buyer deposit that a dealer is not obligated to refund under either G.S. 143-143.21A or G.S. 143-143.21B is not unclaimed or abandoned property and is not subject to this Article. All other buyer deposits made in accordance with G.S. 143-143.21A are subject to this Article.

(d) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned or unclaimed property. For purposes of this section, the term 'credit balances' means items such as overpayments or underpayments on the sale of goods or services.

"§ 116B-55. Contents of safe deposit box or other safekeeping depository.

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"§ 116B-56. Rules for taking custody.

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

a. The last known address of the person entitled to the property is in this State; or

b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property

to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge.

A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and

its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

"§ 116B-59. Notice by holders to apparent owners.

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"§ 116B-60. Report of abandoned property; certification by holders with tax return.

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"§ 116B-61. Payment or delivery of abandoned property.

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"§ 116B-62. Preparation of list of owners by Treasurer.

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars ($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"§ 116B-63. Custody by State; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in 'good faith' if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing,

based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"§ 116B-65. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most

favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"§ 116B-66. Claim of another state to recover property.

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and

under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

"§ 116B-67. Claim for property paid or delivered to the Treasurer.

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what

each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported.

"§ 116B-73. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"§ 116B-73.1. Discretionary precompliance review.

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The Treasurer may charge the holder a precompliance review fee of up to five hundred dollars ($500.00) per day for conducting this review.

"§ 116B-74. Enforcement.

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"§ 116B-76. Interest and penalties; waiver.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section , a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"§ 116B-77. Agreement to locate property.

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation in an amount greater than twenty-five percent (25%) of the actual value of the property recovered, or is otherwise unconscionable, is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

(f) Any person who enters into an agreement covered by this section with an owner shall register annually with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's federal identification number. A registration fee of one hundred dollars ($100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

"§ 116B-78. Transitional provisions.

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"**§ 116B-79. Rules.**

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely

received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the 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~~ 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."

Section 8. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or ~~29-15;~~ G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 9. G.S. 53-43.7(b)

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by the ~~lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(c);~~ G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him,~~ the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a

county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S. 116B-74;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under G.S. 116B-72 and G.S. 116B-74, may include designation by general type or ~~class as authorized in G.S. 116B-39.~~ class."

Section 12. G.S. 116-209.3 reads as rewritten:

"**§ 116-209.3. Additional powers.**

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized

fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000, and shall apply to property existing on or after that date.

MINUTES
SENATE JUDICIARY I COMMITTEE
APRIL 28, 1999

The Senate Judiciary I Committee met on April 28, 1999 at 1:00 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting or order and recognized Senator Hartsell to explain **Senate Bill 129 – AN ACT TO REPEAL ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE RELATING TO BULK TRANSFERS AND TO ENACT CONFORMING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.**

Senator Clodfelter moved to give Senate Bill 129 a favorable report. The motion carried by a majority voice vote.

Senator Albertson was recognized to explain **Senate Bill 908 – AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT WAREHOUSEMEN DO NOT HAVE TO ISSUE WRITTEN RECEIPTS AS A PRECONDITION TO CREATING A LIEN.**

Senator Carpenter moved to give Senate Bill 908 a favorable report. The motion carried by a majority voice vote.

Senator Clodfelter was recognized to explain **Senate Bill 1021 – AN ACT CONCERNING THE ADMISSIBILITY INTO EVIDENCE OF PUBLIC OR PRIVATE RECORDS MAINTAINED ON PERMANENT, NONERASABLE, MACHINE-READABLE MEDIA AND RELATING TO THE MAINTENANCE AND PRESERVATION OF PUBLIC RECORDS USING THOSE MEDIA.**

Senator Soles moved to give Senate Bill 1021 a favorable report. The motion carried by a majority voice vote.

Senator Hartsell was recognized to explain **Senate Bill 244 – AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 244 for discussion. The motion carried by a majority voice vote.

After discussion by the Committee, Senator Cooper asked that the bill be held and brought back to a future meeting.

Senator Dalton was recognized to explain **Senate Bill 897 – AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.**

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 897 for discussion. The motion carried by a majority voice vote.

After discussion by the Committee, Senator Cooper asked that the bill be held and brought back to a future meeting.

Senator Weinstein was recognized to explain **Senate Bill 973 – AN ACT TO REGULATE THE USE OF AFTERMARKET PARTS IN THE REPAIR OF MOTOR VEHICLES AND TO INCREASE THE FEE FOR FILING AND EXAMINING AN INSURANCE COMPANY APPLICATION FOR ADMISSION.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 973 for discussion. The motion carried by a majority voice vote.

After discussion by the Committee, Senator Cooper asked that the bill be held and brought back to a future meeting.

Senator Soles, Acting Chairman, recognized Senator Cooper to explain **Senate Bill 1012 – AN ACT TO ALLOW A PRESIDING JUDGE IN A COUNTY WITH PROPER VENUE TO EXTEND THE STATUTE OF LIMITATIONS IN A MEDICAL MALPRACTICE ACTION THAT WAS IMPROPERLY PLEADED UNDER RULE 9 OF THE RULES OF CIVIL PROCEDURE AND TO PROVIDE THAT AN INVOLUNTARY DISMISSAL FOR FAILURE TO COMPLY WITH RULE 9 IS NOT** AN ADJUDICATION OF THE MERITS IN MEDICAL MALPRACTICE ACTIONS.

Senator Cooper moved to adopt a Proposed Committee Substitute to Senate Bill 1012 for discussion. The motion carried by a majority voice vote.

Senator Hartsell moved to give the Proposed Committee Substitute to Senate Bill 1012 a favorable report. The motion carried by a majority voice vote.

Senator Cooper announced that the following bills would be put into a Criminal Law Subcommittee to be chaired by Senator Clodfelter:

Senate Bills 448, 590, 1041, 1045,1063, 1069, 1072, 1145, 1146, 1147 and 1154.

There being no further business, the meeting adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: April 26, 1999

RE: Senate Bill 244 (Unclaimed Property Act)

General Comments

Senate Bill 244 amends Chapter 116B of the General Statutes (Escheats and Abandoned Property) by repealing Article 2 (Abandoned Property), repealing Article 3 (Administration of Abandoned Property) except for certain sections that are recodified within Article 1 (Escheats), and adding a new Article 4 (North Carolina Unclaimed Property Act). The new Article 4 is based on the Uniform Unclaimed Property Act (1995), promulgated by the National Conference of Commissioners on Uniform State Laws to update, modernize, and substantially improve the law governing abandoned property. The Article, however, varies in several respects from the Uniform Act.

Senate Bill 244, among other things, sets forth in a single section the various periods after which property is presumed abandoned and the owner activity that may rebut the presumption of abandonment. It closely follows the language of the United States Supreme Court opinion in *Texas v. New Jersey*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), in describing the general rules under which a state may take custody of abandoned property. The bill changes some of the holding periods established under the current law and includes some specific kinds of property not expressly addressed under the current law. Shorter holding periods increase the likelihood of locating the missing property owner. Like the current law, the owner, at any time, may make a claim to the State for restitution of property delivered into the State's custody. Please note that the property is and remains the property of the owner. The bill also makes conforming amendments to other sections of the General Statutes.

property.

Subsection (b) sets forth a nonexclusive list of actions an owner can take to indicate interest in property. These actions include presentment of a check, making deposits and withdrawals from the account in which the property is held, paying a premium, or negotiating an instrument.

Subsection (c) provides that, on the expiration of the dormancy periods specified in subdivisions (1) through (16) of the subsection, unclaimed property is presumed abandoned.

Subsection (d) provides that when the underlying interest, e.g. stock, is presumed abandoned, all other property accruing to the owner as a result of that interest, e.g. dividends, is then also presumed abandoned. Subsection (d) eliminates the situation where underlying stock is presumed abandoned and delivered to the Treasurer but dividends issued on the stock within the last five years must be held by the holder because the dormancy period as to the dividends has not yet expired.

Subsection (e) provides that property is deemed payable or distributable even though the owner has not made a demand or presented an instrument or document that is required to obtain payment.

§ 116B-54. This section brings forward current law on forfeited reservation deposits held by business associations.

§ 116B-55. This section brings forward current law on taking custody of the contents of safe deposit boxes or other safekeeping depositories held by banks and other financial organizations. The contents of safe deposit boxes are presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7. The contents are delivered to the Treasurer as provided by that statute. If the contents include property described in § 116B-53, the Treasurer is required to hold the property for the remainder of the applicable dormancy period set forth in that section before the property is deemed to be received for purpose of public sale under § 116B-65.

§ 116B-56. This section describes the general rules under which this State may take custody of abandoned property. These rules are dependent upon the presence or absence of the last known address of the apparent owner in the records of the holder. Apparent owner is defined in § 116B-52(1) to mean the person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder. Abandoned property is subject to custodial taking by the State regardless of whether the property is located in this or another state.

§ 116B-57. This section provides that dormancy charges imposed by holders for inactivity can not be levied against property held unless there is a valid and enforceable written

Where the holder is itself the issuer of a certificated security and does not have the original certificate to turn over to the Treasurer, subsection (c) allows the Treasurer to obtain a replacement certificate without giving an indemnity bond. G.S. 25-8-405 enables the owner of a certificated security to obtain a replacement of a lost, destroyed, or stolen certificate, provided that reasonable requirements are satisfied and a sufficient indemnity bond is supplied.

Subsection (d) indemnifies a person causing a replacement certificate to be issued to the Treasurer from any claims that the person acted wrongfully in so doing. This indemnification is desirable in that it eliminates any duty of the transferring authority to make an independent investigation into whether the listed owner of the security is in fact missing, or into other factors which might affect the Treasurer's right to obtain custody of the property.

§ 116B-62. This section brings forward current law requiring the Treasurer to prepare a list of apparent owners to be delivered to the clerks of superior court and to publish notice of the list.

§ 116B-63. Subsection (a) defines when property is paid or delivered to the Treasurer in "good faith". Subsection (b) relieves a holder of all liability for any property paid or delivered to the Treasurer in good faith. Subsection (c) requires the Treasurer to reimburse a holder who pays unclaimed money to the Treasurer and subsequently pays a person reasonably appearing to the holder to be entitled to the money. Subsection (d) allows a holder to reclaim property other than money upon filing proof that the apparent owner has claimed the property from the holder. Subsection (e) allows the Treasurer to accept a holder's affidavit as sufficient proof of the holder's right to recover money and property. Subsection (f) provides that if any person or another state makes a claim on a holder for property paid or delivery to the Treasurer, the Treasurer, upon written notice of the claim, is required to defend the holder and provide indemnification against any liability on the claim resulting from payment or delivery of the property in good faith to the Treasurer.

§ 116B-64. This section provides that if property other than money is delivered to the Treasurer, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends must be paid until the date on which the property is delivered to the Treasurer.

§ 116B-65. Subsection (a) requires the public sale of abandoned property, other than securities, within three years after receipt of the property. Subsection (b) governs the sale of securities. Subsection (c) provides that a purchaser takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them.

§ 116B-66. This section and § 116B-56 (rules for taking custody) are designed to carry out the priority scheme enunciated in *Texas v. New Jersey*. In general the state in which the owner had his or her last known address is entitled to claim abandoned property. Where there

other person to examine the records of any person to determine whether the person has complied with Chapter 116B. Subsection (c) authorizes the Treasurer to examine the records of an agent of a business association, e.g. a dividend disbursing agent or transfer agent, that is the holder of property presumed abandoned. Subsection (d) provides for the confidentiality of documents and working papers obtained or compiled in the course of an examination and lists the circumstances under which the documents and papers may be disclosed. If an examination results in the disclosure of reportable property, subsection (e) authorizes the Treasurer to assess against a holder who willfully failed to report or who made a fraudulent report the cost of the examination at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. Subsection (f) permits the use of estimates in instances where the holder has failed to report and deliver property and no longer has reasonably accessible records sufficient to prepare a specific report.

§ 116B-73. Except as provided in subsection (b), subsection (a) requires a holder to maintain records containing the information required to be included in a report for 10 years after the holder filed the report, unless a shorter period is provided by rule of the Treasurer. Subsection (b) requires the issuer of travelers checks and money orders to maintain records of the instruments for three years after the holder filed the report.

§ 116B-74. Subsection (a) authorizes the Treasurer to commence an enforcement action in this or another state. Subsection (b) brings forward current law allowing the Treasurer to order persons required to report, pay, or deliver property to appear before the Treasurer and to produce records and give testimony.

§ 116B-75. This section deals with interstate cooperation and joint actions. Subsection (a) allows an exchange of information relating to abandoned property or its possible existence. Subsection (b) explicitly permits the Treasurer to join with another state to seek enforcement of Chapter 116B. Subsection (c) explicitly permits the Attorney General of this State to commence an enforcement action on behalf of another state if the state agrees to pay the expenses incurred by the Attorney General. Subsection (d) explicitly permits the Treasurer to request that the attorney general of another state or another attorney commence an enforcement action in the other state on behalf of the Treasurer and also allows the Treasurer, with the approval of the Attorney General of this State, to retain an outside attorney to commence an enforcement action in this State on behalf of the Treasurer. The Treasurer may agree to base the attorneys' fees upon a percentage of the value of the property recovered for the State. Subsection (e) continues the authorization of the Treasurer to make expenditures from the Escheat Fund as may be necessary to effectuate this section.

§ 116B-76. This section requires a holder who fails to report, pay, or deliver property to pay interest on the property or value of the property from the date the property should have been reported, paid, or delivered. The section also provides civil penalties for willful failure to report, pay, or deliver property and for making a fraudulent report. These penalties are

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 897*

Short Title: Safety Professionals. (Public)

Sponsors: Senators Dalton; and Perdue.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 37.

"Safety Profession.

"**§ 90-646. Definitions.**

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional (SP). -- A person who, through studies and training in management principles, engineering, chemistry, physics, biology, erogonomics, psychology, physiology, and related science, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"**§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.**

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5).

(b) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(c) Any person who violates this Article is guilty of a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of this Article. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(e) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article.

"**§ 90-648. Exemptions.**

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an associate safety professional, certified safety professional, or safety professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP', 'CSP', or 'SP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional."

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

SENATE BILL 897: Safety Professionals.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Dalton
Date:	April 26, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 897 would create a new Article 37 "Safety Profession" in Chapter 90 of the General Statutes, which governs medicine and allied occupations to provide that only those persons trained as a safety professional could engage in the practice of safety as a safety professional and only those persons certified by the private Board of Certified Safety Professionals could represent themselves as certified safety professionals.

CURRENT LAW: Current law does not provide for certification of safety professionals as defined in the bill nor does the law restrict the use of the name safety professional.

BILL ANALYSIS: Section 1 of the bill creates three new statutory sections. **G.S. 90-646** defines Associate Safety Professional", "Board of Certified Safety Professionals", Certified Safety Professional", "safety profession", and "safety professional". A safety professional is defined as a person who has specified training and is competent to evaluate hazardous conditions and practices, analyze accident causes, develop hazard control designs, procedures, and programs, administer and advise others on hazard controls and hazard control programs, and audit and evaluate the effectiveness of hazardous controls and hazardous control programs.

G.S. 90-467 would make it a Class 2 misdemeanor to engage in the practice of safety as a safety professional, or represent that the person is a safety professional without completing the training and studies required by GS 90-646(5). This section also makes it a crime for a person to represent himself or herself as being a certified safety professional without being certified by the Board. The Board is a private corporation established to improve the practice and educational standards for the profession of safety. The Board would set the education, experience, examination, and maintenance requirements for certification. This section also permits the Attorney General and private citizens to seek injunctive relief for violations of this law.

G.S. 90-468 exempts from the application of this new Article students of safety engaged in supervised safety activities, persons who are licensed as other professionals and are engaged in the practice of that profession, persons who practice within the scope of safety, injury, or illness prevention and who do not use specific titles.

EFFECTIVE DATE: The bill would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 897*
Proposed Committee Substitute S897-PCSA137-RU

Short Title: Safety Professionals. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 37.
"Safety Profession.

"**§ 90-646. Definitions.**

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation, incorporated in Illinois in 1969, established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional. -- A person who, through studies, training in management principles, engineering, chemistry, physics, biology, ergonomics, psychology, physiology, and related science, or experience in safety, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5) or has acquired the experience in safety. No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(b) Any person who violates this Article is guilty of a Class 2 misdemeanor. Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of this Article. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(c) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article or by a person who is licensed as an engineer under Chapter 89C of the General Statutes.

(d) Nothing in this Article shall permit the practice of engineering by persons who are not licensed under Chapter 89C of the General Statutes.

"§ 90-648. Exemptions.

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an Associate Safety Professional, Certified Safety Professional, or Safety Professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP' or 'CSP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional.

(4) The practice of the safety profession as defined in this Article by a person who is licensed as an engineer under Chapter 89C of the General Statutes.

(5) A person employed by or working in an official capacity as a safety instructor for the American Red Cross.

"**§ 90-649. Certification registry.**

The Board shall file the certification of all Associate Safety Professionals and Certified Safety Professionals with the Secretary of State. The Board shall remit a filing fee of five dollars ($5.00) to the Secretary of State with each certification filed. The Board may require this filing fee to be paid by the person whose certification is being filed. The Board shall notify the Secretary of State when a person's certification is revoked or no longer in effect.

The Secretary of State shall maintain a registry of all current Certified Associate Safety Professionals and Certified Safety Professionals as furnished by the Board."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

SENATE BILL 897:
Safety Professionals.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Dalton
Date:	April 28, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S897-CSRU-001.1		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 897 would create a new Article 37 "Safety Profession" in Chapter 90 of the General Statutes, which governs medicine and allied occupations to provide that only those persons trained as a safety professional could engage in the practice of safety as a safety professional and only those persons certified by the private Board of Certified Safety Professionals could represent themselves as certified safety professionals.***

CURRENT LAW: Current law does not provide for certification of safety professionals as defined in the bill nor does the law restrict the use of the name safety professional.

BILL ANALYSIS: Section 1 of the bill creates four new statutory sections. **G.S. 90-646** defines "Associate Safety Professional", "Board of Certified Safety Professionals", Certified Safety Professional", "safety profession", and "safety professional". A safety professional is defined as a person who has specified training and is competent to evaluate hazardous conditions and practices, analyze accident causes, develop hazard control designs, procedures, and programs, administer and advise others on hazard controls and hazard control programs, and audit and evaluate the effectiveness of hazardous controls and hazardous control programs.

G.S. 90-467 would make it a Class 2 misdemeanor to engage in the practice of safety as a safety professional, or represent that the person is a safety professional without completing the training and studies required by GS 90-646(5). This section also makes it a crime for a person to represent himself or herself as being a certified safety professional without being certified by the Board. The Board is a private corporation established to improve the practice and educational standards for the profession of safety. The Board would set the education, experience, examination, and maintenance requirements for certification. This section also permits the Attorney General and private citizens to seek injunctive relief for violations of this law. This section also makes it clear that it does not affect the ability of licensed engineers to practice their profession nor does this section permit the practice of engineering except for licensed engineers.

G.S. 90-468 exempts from the application of this new Article students of safety engaged in supervised safety activities, persons who are licensed as other professionals and are engaged in the practice of that profession, persons who practice within the scope of safety, injury, or illness prevention and who do not use specific titles, the practice of safety professional by a licensed engineer, and a person employed by or working in an official capacity as a safety instructor for the American Red Cross.

G.S. 90-649 requires the Board to file copies of certifications of associate safety professionals and certified safety professionals with the Secretary of State and to pay a $5 filing fee. The Secretary of State is required to keep a registry of safety professionals.

EFFECTIVE DATE: The bill becomes effective December 1, 1999 and applies to offenses committed on or after that date.

S897-SMRU-002

Senate Bill 897
Title Protection for Safety Professionals

Sponsor
Senator Walter Dalton

Title Protection for Safety Professionals in North Carolina

What it is & does:

- Define the practice of safety
- Define the qualifications of a "safety professional"
- Prevent exclusion in the practice of safety
- Follows precedent 1997 Senate Bill 430, Title Protection for NC Industrial Hygienists
- Provides deserved recognition for the profession
- Codifies trademark protection

What it is not nor does not do:

- Does not create a bureaucracy
  - no "Departments," "Boards," or "Agencies"
- No exam required
- Does not restrict the practice in any way
- Does not prevent anyone from practicing safety
- Not a licensing initiative

- This Title Protection bill is designed to recognize the safety profession. It provides recognition for titles, terms, and key definitions used by the profession. It provides legal recognition for the profession; and has the state of North Carolina legally protect the use of professional safety titles.
- It also follows the 1997 precedent in North Carolina, of the "Act to Protect the Profession of Industrial Hygienists (SB 430)" which protects industrial hygiene titles.
- The bill is crafted so that all qualified safety professionals would be included. It provides official state recognition for the entire safety profession; it positions all safety professionals to receive legislative recognition.
- The legislation allows the designated safety titles to be used only by those who meet the criteria outlined in the definitions that are part of the bill. In order for a person to call themselves a safety professional, they would be required to meet one of the criteria.
- The bill does not prevent anyone from working in safety. It specifically permits anyone to practice safety, regardless of their qualifications. The legislation only protects the use of the professional safety titles.
- The legislation is revenue neutral. It will not require funding nor formation of governmental bodies. There is no associated agency, board, or Department required to oversee the protection of titles. There are no exams or fees. There are no licenses involved.
- BCSP certifications are given specific recognition since legislation has been enacted in four (4) states, (CT, FL, MN, NV) and introduced in many others.

ABOUT ASSE

The American Society of Safety Engineers (ASSE), is the oldest and largest Society of Safety Professionals in the world. Founded in 1911, our membership currently numbers over 32,000 dedicated safety professionals. Included in this membership are Certified Safety Professionals, Professional Engineers, ergonomists, academicians, fire protection engineers, system safety experts, industrial hygienists, physicians, occupational nurses, and an impressive collection of other disciplines, skills, and backgrounds. We pride ourselves on our dedication to excellence, expertise, and commitment to the protection of people, property, and environment on a world-wide basis.

ASSE serves as Secretariat of seven (7) American National Standards Institute Committees (ANSI) developing safety and health standards which are used by private sector organizations as well as state/Federal governmental agencies such as MSHA, OSHA, etc... ASSE members also sit on over forty (40) additional standards development committees and the Society sponsors educational sessions on standards development. The Society also has eleven (11) technical divisions consisting of: Construction, Consultants, Engineering, Environmental, Health Care, International, Management, Public Sector, Risk Management and Insurance, Mining, and Transportation. The ASSE members included in these divisions are leaders in their field with the knowledge and expertise needed to move safety and health forward on a global level. The Society is also currently recruiting members for a new Industrial Hygiene Division.

<u>North Carolina Membership</u>

The ASSE North Carolina Chapters are also active participants in a wide variety of public and private sector policy issues. We have recently introduced title protection legislation to protect the profession and provide deserved recognition. Although there is some overlap with Chapters in neighboring states, there are approximately 1,000 ASSE members in North Carolina working to protect people, property, and the environment. At present we have the following chapters and membership:

- Eastern Carolina (Greenville area) 93 Members
- Greater Tidewater (Northeastern NC) - 205 Members
- North Carolina (Raleigh/Durham area) - 223 Members
- Piedmont (Southwestern NC) - 203 Members
- Tarheel (Charlotte area) - 263 Members
- Triad (Greensboro area) - 180 Members
- Western Carolina (Asheville area) 79 Members

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 973*

Short Title: Regulate Used Motor Vehicle Parts. (Public)

Sponsors: Senators Weinstein; Cooper, Forrester, Hoyle, Odom, Rucho, and Wellons.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE USE OF AFTERMARKET PARTS IN THE REPAIR OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-182. Motor vehicle repairs; selection of replacement parts; disclosure to insureds.**

(a) No insurer shall require the use of an aftermarket part in the repair of a new motor vehicle as a condition of payment under a policy covering damages to the motor vehicle. No insurer shall require additional payment for the use of new and original manufacturer equipment in repairing a new motor vehicle.

(b) No insurer shall require the use of an aftermarket part in the repair of a motor vehicle that is not new as a condition of payment under a policy covering damages to the motor vehicle unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty. Insurers specifying the use of aftermarket parts shall include in the estimate the costs of any modifications made necessary by the use of aftermarket parts, including modifications necessary to attain satisfactory fit, finish, and corrosion protection.

(c) Every insurer that writes motor vehicle insurance in this State and that intends to require or specify the use of aftermarket parts must disclose to its policyholders in writing, either in the policy or on a sticker attached thereto, the following information in no smaller print than ten point type:

'IN THE REPAIR OF YOUR COVERED AUTO UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE. UNDER THE LAWS OF THIS STATE, IN THE REPAIR OF A VEHICLE LESS THAN THREE YEARS OLD, YOU HAVE A CHOICE TO USE ORIGINAL MANUFACTURER PARTS OR NONORIGINAL MANUFACTURER PARTS.'

An insurer must disclose to a claimant in writing, either on the estimate or on a separate document attached to the estimate, the following information in no smaller print than ten point type:

'THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING.'

All aftermarket parts installed on a motor vehicle shall be clearly identified on the estimate and invoice for the repair.

An automobile part not made by the original manufacturer shall have affixed or inscribed on the part the logo or name of the manufacturer and, when practicable, the logo or name of the manufacturer shall be visible.

(d) As used in this section:

(1) 'Aftermarket part' means a part made by a nonoriginal manufacturer.

(2) 'Claimant' means a first-party claimant or a third-party claimant.

(3) 'Insurer' includes any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

(4) 'New motor vehicle' means a motor vehicle manufactured no longer than three years prior to the date the claim is made for repair of the motor vehicle.

(5) 'Nonoriginal manufacturer' means any manufacturer other than the original manufacturer of a part.

(6) 'Part' means a sheet metal or plastic part that generally is a component of the exterior of a motor vehicle, including an inner or outer panel.

(e) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-45."

Section 2. This act becomes effective October 1, 1999, and applies to insurance policies made or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 973*
Proposed Senate Committee Substitute: S973-PCSLT-001
ATTENTION: LINE NUMBERS MAY CHANGE UPON ADOPTION.

Short Title: Regulate Used Motor Vehicle Parts. (Public)

Sponsors:

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE USE OF AFTERMARKET PARTS IN THE REPAIR OF MOTOR VEHICLES AND TO INCREASE THE FEE FOR FILING AND EXAMINING AN INSURANCE COMPANY APPLICATION FOR ADMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-182. Motor vehicle repairs; selection of replacement parts; disclosure to insureds.

(a) No insurer shall require the use of an aftermarket part in the repair of a new motor vehicle as a condition of payment under a policy covering damages to the motor vehicle. No insurer shall require additional payment for the use of new and original manufacturer equipment in repairing a new motor vehicle.

(b) No insurer shall require the use of an aftermarket part in the repair of a motor vehicle that is not new as a condition of payment under a policy covering damages to the motor vehicle unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty. Insurers specifying the use of aftermarket parts shall include in the estimate the costs of any modifications made necessary by the

use of aftermarket parts, including modifications necessary to attain satisfactory fit, finish, and corrosion protection.

(c) Every insurer that writes motor vehicle insurance in this State and that intends to require or specify the use of aftermarket parts must disclose to its policyholders in writing, either in the policy or on a sticker attached thereto, the following information in no smaller print than ten point type:

'IN THE REPAIR OF YOUR COVERED AUTO UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE. UNDER THE LAWS OF THIS STATE, IN THE REPAIR OF A VEHICLE LESS THAN THREE YEARS OLD, YOU HAVE A CHOICE TO USE ORIGINAL MANUFACTURER PARTS OR NONORIGINAL MANUFACTURER PARTS.'

An insurer must disclose to a claimant in writing, either on the estimate or on a separate document attached to the estimate, the following information in no smaller print than ten point type:

'THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBIL PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING.'

All aftermarket parts installed on a motor vehicle shall be clearly identified on the estimate and invoice for the repair.

An automobile part not made by the original manufacturer shall have affixed or inscribed on the part the logo or name of the manufacturer and, when practicable, the logo or name of the manufacturer shall be visible.

(d) As used in this section:

(1) 'Aftermarket part' means a part made by a nonoriginal manufacturer.

(2) 'Claimant' means a first-party claimant or a third-party claimant.

(3) 'Insurer' includes any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

(4) 'New motor vehicle' means a motor vehicl manufactured no longer than three years prior to the date the claim is made for repair of the motor vehicle.

(5) 'Nonoriginal manufacturer' means any manufacturer other than the original manufacturer of a part.

(6) 'Part' means a sheet metal or plastic part that generally is a component of the exterior of a motor vehicle, including an inner or outer panel.

(e) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-45."

Section 2. G.S. 58-6-5(1) reads as rewritten:

"(1) For filing and examining an insurance company application for admission, a nonrefundable fee of ~~two hundred fifty dollars ($250.00),~~ five hundred dollars ($500.00), to be submitted with such filing; for filing and auditing annual statement, one hundred dollars ($100.00); for filing any other papers required by law, twenty-five dollars ($25.00); for each certificate of examination, condition, or qualification of company or association, fifteen dollars ($15.00); for each seal when required, ten dollars ($10.00); for a list of licensed insurance companies, ten dollars ($10.00)."

Section 3. This act becomes effective October 1, 1999, and applies to insurance policies made or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 973*
Proposed Committee Substitute S973-PCS2760-LT

Short Title: Regulate Used Motor Vehicle Parts. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE USE OF AFTERMARKET PARTS IN THE REPAIR OF MOTOR VEHICLES AND TO INCREASE THE FEE FOR FILING AND EXAMINING AN INSURANCE COMPANY APPLICATION FOR ADMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-182. Motor vehicle repairs; selection of replacement parts; disclosure to insureds.**

(a) No insurer shall require the use of an aftermarket part in the repair of a new motor vehicle as a condition of payment under a policy covering damages to the motor vehicle. No insurer shall require additional payment for the use of new and original manufacturer equipment in repairing a new motor vehicle.

(b) No insurer shall require the use of an aftermarket part in the repair of a motor vehicle that is not new as a condition of payment under a policy covering damages to the motor vehicle unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty. Insurers specifying the use of aftermarket parts shall include in the estimate the costs of any modifications made necessary by the use of aftermarket parts, including modifications necessary to attain satisfactory fit, finish, and corrosion protection.

(c) Every insurer that writes motor vehicle insurance in this State and that intends to require or specify the use of aftermarket parts must disclose to its policyholders in

writing, either in the policy or on a sticker attached thereto, the following information in no smaller print than ten point type:

'IN THE REPAIR OF YOUR COVERED AUTO UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE. UNDER THE LAWS OF THIS STATE, IN THE REPAIR OF A VEHICLE LESS THAN THREE YEARS OLD, YOU HAVE A CHOICE TO USE ORIGINAL MANUFACTURER PARTS OR NONORIGINAL MANUFACTURER PARTS.'

An insurer must disclose to a claimant in writing, either on the estimate or on a separate document attached to the estimate, the following information in no smaller print than ten point type:

'THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING.'

All aftermarket parts installed on a motor vehicle shall be clearly identified on the estimate and invoice for the repair.

An automobile part not made by the original manufacturer shall have affixed or inscribed on the part the logo or name of the manufacturer and, when practicable, the logo or name of the manufacturer shall be visible.

(d) As used in this section:

(1) 'Aftermarket part' means a part made by a nonoriginal manufacturer.

(2) 'Claimant' means a first-party claimant or a third-party claimant.

(3) 'Insurer' includes any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

(4) 'New motor vehicle' means a motor vehicle manufactured no longer than three years prior to the date the claim is made for repair of the motor vehicle.

(5) 'Nonoriginal manufacturer' means any manufacturer other than the original manufacturer of a part.

(6) 'Part' means a sheet metal or plastic part that generally is a component of the exterior of a motor vehicle, including an inner or outer panel.

(e) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-45."

Section 2. G.S. 58-6-5(1) reads as rewritten:

"(1) For filing and examining an insurance company application for admission, a nonrefundable fee of ~~two hundred fifty dollars ($250.00),~~ five hundred dollars ($500.00), to be submitted with such filing; for filing and auditing annual statement, one hundred dollars ($100.00); for filing any other papers required by law, twenty-five dollars ($25.00); for each certificate of examination, condition, or qualification of company or association, fifteen dollars ($15.00); for each seal when required, ten dollars ($10.00); for a list of licensed insurance companies, ten dollars ($10.00)."

Section 3. This act becomes effective October 1, 1999, and applies to insurance policies made or renewed on or after that date.

SENATE BILL 973:
Regulate Used Motor Vehicle Parts

BILL ANALYSIS

Committee:	Judiciary 1	**Introduced by:**	Weinstein
Date:	April 27, 1999	**Summary by:**	Jo B. McCants
Version:	S973-PCSLT-001		Committee Co-Counsel

SUMMARY: The proposed committee substitute for Senate Bill 973 provides that:

1) An insurer cannot require the use of aftermarket parts in repairing a "new motor vehicle" (a defined term).

2) An insurer cannot require the use of aftermarket parts in repairing a motor vehicle that is not new as a condition of payment under an insurance policy, unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty.

3) Every insurer who writes motor vehicle insurance policies in this State and intends to use aftermarket parts must disclose the insurer's intent either in the policy or on a sticker attached to the policy.

4) All aftermarket parts installed on a motor vehicle must be clearly identified on the estimate and invoice for repair.

Any person who violates this act is subject to the applicable provisions of G.S. 58-2-70 and 58-33-45. (See attached statutes) The filing and examining fee for insurance company applications is increased from $250 to $500. This act becomes effective on October 1, 1999, and applies to insurance policies made or renewed on that date.

§ 58-2-70. Civil penalties or restitution for violations; administrative procedure.

(a) This section applies to any person who is subject to licensure or certification under this Chapter.

(b) Whenever the Commissioner has reason to believe that any person has violated any of the provisions of this Chapter, and the violation subjects the license or certification of that person to suspension or revocation, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(c) If, under subsection (b) of this section, the Commissioner finds a violation of this Chapter, the Commissioner may, in addition to or instead of suspending or revoking the license or certification, order the payment of a monetary penalty as provided in subsection (d) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (e) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(d) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the penalty shall not be less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(e) Upon petition of the Commissioner the court may order the person who committed a violation specified in subsection (c) of this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time and also in any appeal of the Commissioner's order.

(f) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(g) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty or restitution.

(h) Unless otherwise specifically provided for, all administrative proceedings under this Chapter are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75.

§ 58-33-45. Suspension, revocation, or nonrenewal of licenses.

(a) The Commissioner may suspend, revoke, or refuse to renew any license issued under this Article if, in accordance with the provisions of Article 3A of Chapter 150B, he finds as to the licensee any one or more of the following conditions:

(1) Any untrue material statement in the license application;

(2) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance;

(3) Violation of, or noncompliance with, any insurance laws, or of any lawful rule, or order of the Commissioner or of a Commissioner of another state;

(4) Obtaining or attempting to obtain any such license through misrepresentation or fraud;

(5) Improperly withholding, misappropriating, or converting to his own use any moneys belonging to policyholders, insurers, beneficiaries or others received in the course of his insurance business;

(6) Misrepresentation of the terms of any actual or proposed insurance contract;

(7) Willfully overinsuring property;

(8) Conviction of a misdemeanor involving moral turpitude, or conviction of a felony;

(9) The person has been found guilty of any unfair trade practice or fraud;

(10) In the conduct of his affairs under the license, the licensee has used fraudulent, coercive or dishonest practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible;

(11) His license has been suspended or revoked in any other state, province, district, or territory;

(12) The person has forged another's name to an application for insurance; or

(13) The person has cheated on an examination for an insurance license.

(b) Notwithstanding the notice and hearing requirements of subsection (a) of this section, if the Commissioner finds that the public health, safety, or welfare requires emergency action and incorporates this finding in his order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings to suspend, revoke, or refuse renewal provided for in subsection (a) of this section. The proceedings shall be promptly commenced and determined.

(c) Repealed by Session Laws 1993, c. 504, s. 28, effective July 24, 1993.

(d) For the purposes of investigation under this section, the Commissioner shall have all the power conferred upon him by G.S. 58-3-125.

(e) The license of a partnership or corporation may be suspended, revoked, not continued, or refused if the Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and such violation was not reported to the Commissioner nor corrective action taken in relation thereto.

(f) Upon the filing for protection under the United States Bankruptcy Code by any person licensed under this Article, or by any insurance agency in which such licensed person holds a position of employment, management or ownership, such person

shall notify the Commissioner of the filing for protection within three business days after the filing. Upon the appointment of a receiver by a court of this State for any person licensed under this Article, or for any insurance agency in which such licensed person holds a position of employment, management or ownership, such person shall notify the Commissioner of the appointment within three business days thereafter. The willful failure to notify the Commissioner within three business days after the filing for protection or the appointment of a receiver shall, after hearing, cause the license of any person failing to make such notification to be suspended for a period of not less than 60 days nor more than three years, in the discretion of the Commissioner.

(g) If the Commissioner refuses to grant a license, or suspends, or revokes a license, any appointment of such applicant or licensee shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements of this Article.

(h) The provisions of G.S. 58-2-70 apply to any person subject to licensure under this Article.

(i) No person shall be issued a license or appointment to enter the employment of any agency or person, which agency or person is at that time found by the Commissioner to be in violation of any of the insurance laws of this State, or which has been in any manner disqualified under the laws of this State to engage in the insurance business.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1012

Short Title: Medical Malpractice Pleadings. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PRESIDING JUDGE IN A COUNTY WITH PROPER VENUE TO EXTEND THE STATUTE OF LIMITATIONS IN A MEDICAL MALPRACTICE ACTION THAT WAS IMPROPERLY PLEADED UNDER RULE 9 OF THE RULES OF CIVIL PROCEDURE AND TO PROVIDE THAT AN INVOLUNTARY DISMISSAL FOR FAILURE TO COMPLY WITH RULE 9 IS NOT AN ADJUDICATION ON THE MERITS IN MEDICAL MALPRACTICE ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. -- Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident or presiding judge of the superior court of ~~the~~ a county in which venue for the cause of action ~~arose~~ is proper may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

Section 2. G.S. 1A-1, Rule 41(b) reads as rewritten:

"(b) Involuntary dismissal; effect thereof. -- For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim therein against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this section and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, ~~or~~ for failure to join a necessary party, or for failure to comply with Rule 9(j), operates as an adjudication upon the merits. If the court specifies that the dismissal of an action commenced within the time prescribed therefor, or any claim therein, is without prejudice, it may also specify in its order that a new action based on the same claim may be commenced within one year or less after such dismissal."

Section 3. This act becomes effective October 1, 1999, and applies to judgments entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1012-PCSSE-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1012
THIS IS A DRAFT 28-APR-99 11:08:15
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Medical Malpractice Pleadings. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PRESIDING JUDGE IN A COUNTY WITH PROPER VENUE TO EXTEND THE STATUTE OF LIMITATIONS IN A MEDICAL MALPRACTICE ACTION THAT WAS IMPROPERLY PLEADED UNDER RULE 9 OF THE RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. -- Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify

that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident or presiding judge of the superior court of ~~the~~ a county in which venue for the cause of action ~~arose~~ is proper may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 1012:
Medical Malpractice Pleadings.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Cooper
Date:	April 28, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S1012-PCSSE-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1012 would amend one of the Rules of Civil Procedure applicable to malpractice actions to permit the presiding judge in the county with venue for the case to extend the statute of limitations in order to permit the plaintiff to comply with the expert witness prefiling review requirement.***

CURRENT LAW: Current law permits a resident judge in the county where the cause of action arose in a malpractice case to grant an extension of the statute of limitations up to an additional 120 days in order to permit the plaintiff to comply with the expert witness prefiling review requirement of Rule 9(j).

BILL ANALYSIS: Section 1 of the bill would amend Rule 9(j) of the Rules of Civil Procedure by allowing a resident or presiding judge in a county for which there is proper venue for the case to grant an extension of the statute of limitations up to an additional 120 days in order to comply with the requirement that a malpractice action be reviewed by a medical professional willing to testify that the medical care did not comply with the applicable standard of care. This expands the judges authorized to extend the statute of limitations from just resident judges in the county where the action arose, to a resident or presiding judge of a county with proper venue over the action.

EFFECTIVE DATE: The bill becomes effective October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

REVISED REPORT

Wednesday, April 28, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **129** Repeal UCC Article on Bulk Transfers
Sequential Referral: None
Recommended Referral: None

S.B. **908** Revise UCC Warehouse Receipts
Sequential Referral: None
Recommended Referral: None

S.B. **1021** Computerized Evidence Amendments
Sequential Referral: None
Recommended Referral: None

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

S.B. **120** Up Some Underage Sales Penalties
Draft Number: PCS 8606
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **292** Sup. Ct. Crim. Case Docketing Plan
Draft Number: PCS 1725
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1005** Year 2000 Liability Limitations
Draft Number: PCS 7675
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1012** Medical Malpractice Pleadings

Draft Number:	PCS 6670
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1055** Certain Court Report Services

Draft Number:	PCS 7677
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 8

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

JF
Name of Committee

4-29-99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sandy Sands	WSSR
Cindy Lord	WSSR
~~Jerry Gardner~~	ASSE
Joe McClees	ASSE
Arlene Edwards	ASSE
JOHN PAULS	ASSÉ
Brenda Dougherty	Sprint
Jon Mann	
Paula Gupton	NCFB
Steve Woodson	NC Farm Bureau
Dick Swarts	Burlington Industries
Shelton Mooney	Burlington Cummings High School
Dana Long	Student. Cummings High School
Andy Stacy IV	Student Cummings High School
John McMillan	NFOS
Arlene AJ Ban	NCMS

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chris Erickson	Student, Cummings High School
Morgan Perretta	Student, Cummings High School
Debbie Perretta	Cummings High School
Timothy Kent	American Institute of Architects
Dick Carlton	American Exp.
Larry Beasley	Beasley and Assoc.

MINUTES
SENATE JUDICIARY I COMMITTEE
MAY 4, 1999

The Senate Judiciary I Committee met on May 4, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Barefoot to explain **House Bill 1088 – AN ACT TO IMPROVE AND MODERNIZE THE TORRENS LAND TITLE REGISTRATION PROCEDURES OF THE STATE.**

Senator Carpenter moved to give House Bill 1088 a favorable report. The motion carried by a majority voice vote.

Walker Reagan, Committee Counsel, was recognized to explain **Senate Bill 873 – AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS** in the absence of Senator Dalton, the bill sponsor.

Rex Mamein, with the Secretary of State's office, was recognized to speak on the bill.

Senator Clodfelter moved to amend the bill on Page 4, Line 44. The motion carried by a majority voice vote.

After further discussion by the Committee, Senator Cooper requested that the bill be held and brought back to a future meeting.

There being no further business, the meeting adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

REVISED

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, May 4, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 873	Improve Registered Documents	Dalton
HB 924	Community Mediation Centers	Nesbitt
HB 1088	Improve Torrens Law	Barefoot

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - May 3, 1999

SB 873	Improve Registered Documents	Dalton
HB 924	Community Mediation Centers	Nesbitt
HB 1088	Improve Torrens Law	Barefoot

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1088

Short Title: Improve Torrens Law. (Public)

Sponsors: Representatives Barefoot; and Hill.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND MODERNIZE THE TORRENS LAND TITLE REGISTRATION PROCEDURES OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 43-5 reads as rewritten:

"**§ 43-5. Fees of officers.**

The examiner ~~hereinbefore~~ provided for in G.S. 43-4 shall ~~receive, as may be allowed by the clerk, a minimum fee of five dollars ($5.00) for such examination of each title of property assessed upon the tax books at the amount of five thousand dollars ($5,000) or less; for each additional thousand dollars ($1,000) of assessed value of property so examined he shall receive fifty cents (50¢); for examination outside of the county he shall receive a reasonable allowance.~~ be compensated as provided in G.S. 1-408. All plats required by this Chapter shall comply with G.S. 47-30 and shall be recorded in the office of the register of deeds, and the recording fee shall be that specified in G.S. 161-10 for recording plats. ~~There shall be allowed to the register of deeds for copying the plot upon registration of titles book two dollars ($2.00) for the first page and one dollar ($1.00) for each succeeding page;~~ The fee for ~~copying or~~ recording new certificates under this ~~Chapter, two dollars ($2.00) for the first page and one dollar ($1.00) for each succeeding page;~~ Chapter shall be that specified in G.S. 161-10 for recording instruments in general. The fee for issuing the certificate and new certificates under this ~~Chapter, fifty cents (50¢) for each;~~ Chapter shall be that specified in G.S. 161-10 for issuing certified copies. The fee for noting the entries or memorandum required and for the entries noting the cancellation of mortgages and all other entries, if any, herein provided ~~for, fifty cents (50¢) for each~~

~~entry. The county or other surveyor employed under the provisions of this Chapter shall not be allowed to charge more than forty cents (40¢) per hour for his time actually employed in making the survey and the map, except by agreement with the petitioner, but he shall be allowed a minimum fee of two dollars ($2.00).~~ for shall be that specified in G.S. 161-10 for recording instruments in general.

There shall be no other fees allowed of any nature except as herein provided, and the ~~bond~~ bonds of the ~~register,~~ register and clerk ~~and sheriff~~ shall be liable in case of any mistake, malfeasance, or misfeasance as to the duties imposed upon them by this Chapter in as full a manner as such bond is now liable by law."

Section 2. G.S. 43-13 reads as rewritten:

"§ 43-13. Manner of registration.

(a) The ~~county commissioners of each county shall provide for the~~ register of deeds ~~in the county a book, to be called Registration of Titles, in which the register~~ shall ~~enroll,~~ register and index, as hereinafter provided, the decree of title before mentioned ~~and the copy of the plot contained in the petition,~~ and all subsequent transfers of title, and note all voluntary and involuntary transactions in any wise affecting the title to the land, authorized to be entered ~~thereon.~~ thereon in the real property records and indexes. The certificate of title and the entries for voluntary and involuntary transactions shall be indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee index in the name of the registered owner. If the title be subject to trust, condition, encumbrance or the like, the words 'in trust,' 'upon condition,' 'subject to encumbrance,' 'life estate,' or like appropriate insertion shall indicate the fact and fix any person dealing with such certificate with notice of the particulars of such limitations upon the title as appears upon the ~~registry.~~ registry, and no new or additional certificate number shall be issued in such circumstances. No erasure, alteration, or amendment shall be made upon the registry after entry and issuance of a certificate of title except by order of a court of competent jurisdiction.

(b) When a voluntary or involuntary transaction is entered on a certificate of title, the certificate with the new entry shall be copied and recorded and indexed in the real property records and indexes. The copied certificate shall be indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee index in the name of the registered owner."

Section 3. G.S. 43-31 reads as rewritten:

"§ 43-31. When whole of land conveyed.

Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance ~~upon or~~ attached to the certificate substantially as follows:

~~A.B. and wife~~ The owners (giving the names of the parties owning land described in the certificate ~~and their wives~~) hereby, in consideration of ..... dollars, sell and convey to ~~C.Bill~~ the purchaser (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached. The transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed.

The same shall be signed and properly acknowledged by the parties ~~and their wives~~ and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the ~~deed,~~ transfer, and shall be entered upon the registration of titles book as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this Chapter, and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled."

Section 4. G.S. 43-32 reads as rewritten:

"**§ 43-32. Conveyance of part of registered land.**

The transfer of any part of a registered estate, either of an undivided interest therein or of a separate lot or parcel thereof, shall be made by an instrument of the transfer or conveyance similar in form to that herein provided for the transfer of the whole of any registered estate, to which shall be attached the certificate of title of such registered estate. In case of the transfer of an undivided interest in a registered estate, such instrument ~~or~~ of transfer or conveyance shall accurately specify and describe the extent and amount of the interest transferred and of the interest retained, respectively. In case of a transfer of a separate lot or parcel of a registered estate, such instrument of transfer or conveyance shall describe the lot or parcel transferred either by metes and bounds or by reference to the map or plat attached thereto, and shall in every case be accompanied by a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate and of the lot or parcel to be ~~transferred.~~ transferred, but a new survey of the original registered estate shall not be required. The transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed."

Section 5. G.S. 43-33 reads as rewritten:

"**§ 43-33. Duty of register of deeds upon part conveyance.**

Upon presentation to the register of deeds of an instrument of transfer or conveyance of an undivided interest in a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of title attached thereto and to issue to each owner a new certificate of title, each bearing the same number as the original certificate of title and accurately specifying and describing the extent and the amount of the interest retained or of the interest transferred, as the case may be. Upon presentation to the register of deeds of an instrument of transfer or conveyance of a separate lot or parcel of a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of the title attached thereto and to issue to each owner a new certificate of title bearing a new number and describing the separate lot or parcel retained or transferred, as the case may be, either by metes and bounds or by reference to a map or plat thereto attached. The register of deeds is responsible for determining that each new certificate of title contains a description of the property transferred or retained but not for verifying the accuracy of any description."

Section 6. G.S. 43-45 reads as rewritten:

"**§ 43-45. Docketed judgments.**

Whenever any judgment of the superior court of the county in which the registered estate is situated shall be duly docketed in the office of the clerk of the superior court, or any lien or notice of lis pendens is filed in the office of the clerk of the superior court, it shall be the duty of the ~~clerk~~ clerk, upon the request of any interested party, to certify the same to the register of deeds. The register of deeds shall ~~thereupon~~ enter upon the certificate of title, the date, and the amount of the judgment, and the same shall be a lien upon such land as fully as such docketed judgment would be a lien upon unregistered lands of the judgment ~~debtor.~~ debtor, and the register of deeds is authorized to recover the certificate of title pursuant to G.S. 43-40. The register of deeds shall also enter notice of the judgment, lien, or lis pendens on the record copy of the certificate of title, and the encumbrance is valid against the registered estate from the time it is noted on the record copy."

Section 7. G.S. 43-46 reads as rewritten:

"**§ 43-46. Notice of delinquent taxes filed.**

It shall be the duty of the ~~sheriff or other collector of taxes or assessments of each county and town,~~ tax collector of each taxing unit, not later than ~~the first day of March in each year,~~ June 30 following the date the taxes became delinquent, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including ~~penalty therefor,~~ interest, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and ~~such sheriff or other~~ the collector ~~of taxes~~ and his sureties shall be liable for the payment of the taxes and assessments with the ~~penalty and~~ interest thereon. The register of deeds shall enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from the time it is noted on the record copy. The register of deeds shall enter the notice of cancellation of the tax lien on the record copy of the certificate of title upon presentation of satisfactory evidence of payment."

Section 8. G.S. 43-47 is repealed.

Section 9. G.S. 43-48 reads as rewritten:

"**§ 43-48. Foreclosure of tax lien. ~~Sale of unredeemed land; application of proceeds.~~**

~~If there be no redemption of land under the preceding section [G.S. 43-47], in accordance with the law, it shall be the duty of the sheriff or other collector of taxes in the county or town in which the land lies to sell the same at public auction for cash, first giving such notice of the time and place of sale as is prescribed for execution sales, and the proceeds of sale shall be applied, first, to the payment of all taxes and assessments then due to the State, county and town, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars ($5.00); third, to the payment of a commission to the officer making the sale of five per centum (5%) on the first three hundred dollars ($300.00) and two per centum (2%) on the~~

~~residue of the proceeds; fourth, to the satisfaction of any liens other than the taxes and assessments registered against the land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previous to sale for taxes, subject to redemption as provided herein, his heirs, personal representatives or assigns.~~ The lien for ad valorem taxes may be foreclosed and the property sold pursuant to G.S. 105-375. A note of the sale under this section shall be duly registered, and a certificate shall be entered and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this Chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon."

Section 10. This act becomes effective January 1, 2000.

BILL ANALYSIS

HOUSE BILL 1088:
Improve Torrens Law.

Committee:	Senate Judiciary I	**Introduced by:**	Representative Barefoot
Date:	May 4, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1088 makes various changes to the Torrens real property title registration law, including removing the cap on fees that can be authorized for the examiner of title and recording and copying fees that may be collected by the register of deeds, requiring titles by registration to be filed and indexed with the other real property records, clarifying the procedure for applying liens, judgments and tax liens to the property, and changing how Torrens property is to be disposed of for property tax liens. This bill is similar to the 1997 LRC Land Title Registration Committee's recommendation to the 1998 Session of the General Assembly.***

CURRENT LAW: Current law provides for an alternative method of transferring title for real property through a registration and certification process instead of by deed. This method of registration is commonly known as "Torrens Registration" or "Torrens Title". Title to the property is initially proven by a court action resulting in a judgment of title to the property. Thereafter all matters affecting the property, including subsequent sales and conveyances, are effected by changes made to the certificate of title in the possession of the register of deeds. These changes include mortgages, easements, judgments, liens, and tax obligations.

Current law caps the fees that may be paid to have the titled examined at $5 for the first $5,000 value, and $.50 per $1000 over $5,000. The fees the register of deeds may charge for copying and filing Torrens documents are also limited. Torrens registrations are kept in a Registration of Titles book, separate from other real property title records.

BILL ANALYSIS: Section 1 of the bill amends G.S. 43-5 to eliminate the maximum fees that can be charged or collected by the examiner and the register of deeds and allows the clerk of court to authorize a reasonable fee to the examiner based on services performed. A Torrens examiner is an attorney appointed by the Clerk to make an independent examination of the title after a petitioner has instituted a proceeding to have a parcel of land registered under the Torrens system. The fees allowed to be charged by the register of deeds are the same as for other filings and copies permitted by the register of deeds for other real property filings. The sheriff is relieved from any liability against the sheriff's bond in connection with this registration process since the sheriff is no longer responsible for collecting taxes on "Torrens" property.

Section 2 provides that Torrens registration shall be filed and indexed with other real property transactions and eliminates the necessity to keep a separate book for Torrens registrations. Any Torrens transactions would be noted by "registered estate no." so they could easily be identified. This section also

requires any new transaction noted on the certificate of title to be copied, recorded and indexed at the register of deeds.

Section 3 provides that Torrens registrations shall be indexed in the grantor and grantee indexes in the same manner as deeds.

Section 4 clarifies that when a portion of a Torrens tract is conveyed a new survey of the original tract is not required.

Section 5 adds a requirement that the register of deeds insure that each new certificate of title has a description of the property being transferred but the register of deeds is not responsible for verifying the accuracy of the description.

Section 6 requires the clerk of court, upon the request of any interest party, to certify to the register of deeds any judgment, lien, or notice of lis pendens that would apply to the owner of the property, and directs the register of deeds to enter notice of the matters from the clerk on the record copy of the certificate of title. Recording of notice of the judgment, liens, or lis pendens on the record copy would make the encumbrance valid against the registered estate from the time of recordation.

Section 7 requires the tax collector to notify the register of deeds of any tax delinquencies arising for ad valorem taxes by June 30th of each year, and requires the register of deeds to enter notice of the delinquency on the title. The act of noting the delinquency on the record copy would make the tax lien valid from that time forward.

Sections 8 and 9 repeals G.S. 43-47, the statute that sets out the procedure for the sale of Torrens land for delinquent taxes, and changes G.S. 43-48, the law to make Torrens property subject to the same process of tax foreclosure applicable to all other real property.

EFFECTIVE DATE: The bill becomes effective January 1, 2000.

§ 43-47. Sale of land for taxes; redemption.

Whenever any sale of registered land is made for delinquent taxes or levies, it shall be the duty of the sheriff or other officer making such sale to file forthwith a memorandum thereof for registration in the office of the register of deeds; and thereupon the registered owner shall be required to produce his certificate for cancellation, and a new owner's certificate shall be issued in favor of the purchaser, and the land shall be transferred on the land books to the name of such purchaser, unless such delinquent charges and all penalties and interest thereon be paid in full within 90 days after date of such sale; but a note shall be entered upon the certificate of title and also upon any such new owner's certificate, reserving the privilege of redemption in accordance with the law. In case of any redemption under this section of land sold for taxes, a note of the fact shall be duly registered, and if an owner's certificate has been issued to any purchaser, the same shall be cancelled and a new one shall be issued to the person who has redeemed.

(1913, c. 90, ss. 22, 23; C.S., s. 2420.)

This summary was contributed by Giles Perry.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, May 04, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1088** Improve Torrens Law
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 873

Short Title: Improve Registered Documents. (Public)

Sponsors: Senators Dalton; Albertson, Hagan, Kerr, Lee, Miller, Phillips, Reeves, Soles, and Wellons.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-54.3(b) reads as rewritten:

"(b) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to all of the following aspects of land records management:

(1) Uniform indexing of land ~~records;~~ records.

(2) Uniform recording and indexing procedures for maps, plats and ~~condominiums; and~~ condominiums.

(3) Security and reproduction of land records.

(4) Uniform recording standards for land records."

Section 2. G.S. 147-54.3(b1) reads as rewritten:

"(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing and recording standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards

adopted shall be posted in the office of the register of deeds in each county of the State."

Section 3. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. -- For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be six dollars ($6.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00), for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. -- For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ten dollars ($10.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. -- For issuing a license forty dollars ($40.00); for issuing a delayed certificate with one certified copy five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy five dollars ($5.00).

(3) Plats. -- For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00).

(4) Right-of-Way Plans. -- For each original or amended plan and profile sheet recorded five dollars ($5.00). This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. -- For preparation of necessary papers when birth to be registered in another county five dollars ($5.00); for registration when necessary papers prepared in another county, with one certified copy five dollars ($5.00); for preparation of necessary papers and registration in the same county, with one certified copy ten dollars ($10.00).

(6) Amendment of Birth or Death Record. -- For preparation of amendment and affecting correction two dollars ($2.00).

(7) Legitimations. -- For preparation of all documents concerned with legitimations seven dollars ($7.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. -- For furnishing a certified copy of a death or birth certificate or marriage license three dollars ($3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(9) Certified Copies. -- For furnishing a certified copy of an instrument for which no other provision is made by this section three dollars ($3.00) for the first page, plus one dollar ($1.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. -- For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof two dollars ($2.00).

(11) Uncertified Copies. -- When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(12) Notarial Acts. -- For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. -- Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.
(14) Torrens Registration. -- Such fees as are provided in G.S. 43-5.
(15) Master Forms. -- Such fees as are provided for instruments in general.
(16) Probate. -- For certification of instruments for registration as provided in G.S. 47-14 two dollars ($2.00).
(17) Qualification of Notary Public. -- For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10A-8 five dollars ($5.00).
(18) Reinstatement of Articles of Incorporation. -- For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.
(19) Nonstandard Document. -- For registering a land records document not in compliance with the recording standards adopted pursuant to G.S. 147-54.3(b1) thirty dollars ($30.00), in addition to all other applicable recording fees."

Section 4. G.S. 161-14 reads as rewritten:

"**§ 161-14. Registration of instruments.**

(a) ~~The~~ After the register of deeds determines that all statutory requirements for registration have been met, the register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. He shall then proceed to register it on the day that it is presented unless a temporary index has been established.

(b) The register of deeds may, in his discretion, establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate in all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not later than 30 days after the date of presentation.

~~(b) All instruments presented for registration shall be on paper and in ink of a color, quality, size, and condition that will permit the production of legible and permanent reproductions thereof by photographic or microphotographic processes. If an instrument presented for registration is in a condition that will not permit such reproduction, the register of deeds shall endorse thereon the following notation: "Record of poor quality due to condition of original document." He shall then register the instrument in the usual manner.~~"

Section 5. This act is effective when it becomes law.

SENATE BILL 873:
Improve Registered Documents.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Dalton
Date:	April 27, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 873 would require the Secretary of State, in conjunction with the Register of Deeds Association and the Real Property Section of the NC Bar Association, to adopt uniform recording standards, directs the register of deeds to determine that the registration requirements are met before recording a document, and authorizes the register of deeds to charge an additional $30 for the recording of a document not in compliance with the statewide standards.***

CURRENT LAW: Current law requires the Secretary of State to establish minimum statewide standards for a uniform indexing system of land records and a uniform recording and indexing procedures for maps, plats, and condominiums by registers of deeds. Current law requires the register of deeds to record any document presented for registration and to note on the face of any document not suited for reproduction "Record of poor quality due to condition of original document.". The register of deeds is not authorized to charge fees except for the cost of registration and copies, and other specified services.

BILL ANALYSIS: Sections 1 and 2 of the bill would add to the Secretary of State's responsibilities relative to setting uniform standards for land records management, the establishment of uniform standards for recording land records. These standards are to be established in cooperation with the Registers of Deeds Association and the Real Property Section of the NC Bar Association as is currently required for uniform land record indexing standards.

Section 3 amends the statute which establishes uniform fees that registers of deeds may charge for services, by allowing a register of deeds to charge an additional $30 for the registering of a land record not in compliance with the uniform recording standards adopted. This fee would be in addition to any other applicable recording fees.

Section 4 amends the statute governing the register of deeds duties relative to recording and indexing land records. This section will require the register of deeds to determine that all statutory requirements for registration have been met prior to registering a document. This section also repeals the provision that establishes the standards for registration since these standards will be part of the uniform standards adopted under Section 2 of the bill.

EFFECTIVE DATE: The bill would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 873

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

S873-ARU-001 Page 1 of __

Date 5-4 ,1999

Comm. Sub. [ ]
Amends Title [ ]

Senator

1 moves to amend the bill on page 4, line 44,
2 by rewriting the line to read:
3 "Section 5. Sections 3 and 4 of this act become effective
4 January 1, 2000 and apply to land record documents and instruments
5 registered on or after that date. The remainder of this act is
6 effective when it becomes law.".

SIGNED Daniel G Clodfelter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Judiciary I — 5-4-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Kristin Daniel	INTERN
Ed Regan	N.C. Assoc of Co. Comm.
Steve Woodson	NC Farm Bureau
[illegible]	SOS
[illegible] Valauri	Naticaurica
Earl Wilms	NCHBA
[illegible] Myers	NCEITA
David Simmons	ZOA, BOA
Rayford Hamrick	Gov. Office
Hal Miller	NCACCT

MINUTES
SENATE JUDICIARY I COMMITTEE
MAY 11, 1999

The Senate Judiciary I Committee met on May 11, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Owens to explain **House Bill 870 – AN ACT TO MAGISTRATES TO ACCEPT WAIVERS AND ENTER JUDGMENT IN CERTAIN CASES INVOLVING REGULATION OF THE USE OF MOTOR VEHICLES ON BEACHES.**

Senator Rand moved to give House Bill 870 a favorable report. The motion carried by a majority voice vote.

Representative Goodwin was recognized to explain **House Bill 1286 – AN ACT TO MODIFY THE EXEMPTION FROM THE "MASS GATHERINGS" STATUTE.**

Senator Carpenter moved to give House Bill 1286 a favorable report. The motion carried by a majority voice vote.

Representative Hensley was recognized to explain **House Bill 818 – AN ACT AMENDING THE EVIDENCE CODE, CHAPTER 8C OF THE GENERAL STATUTES, TO MAKE ADMISSIBLE FOR THE PURPOSES OF IMPEACHMENT EVIDENCE OF A WITNESS' CONVICTION OF A FELONY OR CLASS A1, CLASS 1, OR CLASS 2 MISDEMEANOR.**

Senator Rand moved to give House Bill 818 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

REVISED

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, May 11, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

HB	143	Handicap Parking Fines	Rep. Wright
HB	280	Motor Vehicle Technical Changes	Rep. Cole
HB	818	Rule 609 Impeachment Evidence	Rep. Hensley
HB	870	Magistrate Accept Waiver/ Vehicle Violation	Rep. Owens
HB	1286	Mass Gatherings	Rep. Goodwin

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - May 11, 1999

HB 143	Handicap Parking Fines	Rep. Wright
HB 280	Motor Vehicle Technical Changes	Rep. Cole
HB 818	Rule 609 Impeachment Evidence	Rep. Hensley
HB 870	Magistrate Accept Waiver/ Vehicle Violation	Rep. Owens
HB 1286	Mass Gatherings	Rep. Goodwin

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 870

Short Title: Magist. Accept Waiver/Vehicle Viol. (Public)

Sponsors: Representative Owens.

Referred to: Local Government II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW MAGISTRATES TO ACCEPT WAIVERS AND ENTER JUDGMENT IN CERTAIN CASES INVOLVING REGULATION OF THE USE OF MOTOR VEHICLES ON BEACHES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 is amended by adding a new subdivision to read:

"(2a) In misdemeanor cases involving the violation of a county ordinance authorized by law regulating the use of dune or beach buggies or other power-driven vehicles specified by the governing body of the county on the foreshore, beach strand, or the barrier dune system, 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 Court Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;".

Section 2. G.S. 7A-148(a) reads as rewritten:

"(a) The chief district judges of the various district court districts shall meet at least once a year upon call of the Chief Justice of the Supreme Court to discuss mutual problems affecting the courts and the improvement of court operations, to prepare and adopt uniform schedules of offenses for the types of offenses specified in G.S. 7A-273(2) and G.S. 7A-273(2a) for which magistrates and clerks of court may accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, and establish a schedule of penalties or fines therefor,

and to take such further action as may be found practicable and desirable to promote the uniform administration of justice."

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

HOUSE BILL 870:
Magistrates Accept Waivers/Vehicle Violations

BILL ANALYSIS

Committee:	Senate J1	**Introduced by:**	Rep. Owens
Date:	May 11, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Counsel

SUMMARY: ***This bill would give magistrates the authority to accept written appearances, waivers of trial and guilty pleas in misdemeanor cases involving the use of dune or beach buggies or other power-driven vehicles on the foreshore, beach strand, or barrier dune system in violation of a county ordinance. The bill also requires Conference of Chief District Court Judges to include these offenses in its uniform schedule of waivable offenses.***

BILL ANALYSIS:

This bill expands the authority of magistrates to include the authority to dispose of misdemeanor offenses that are violations of a county ordinance regulating the use of dune or beach buggies or other power-driven vehicles on the foreshore, beach strand, or the barrier dune system. The magistrates would dispose of the cases in the manner prescribed by the Conference of Chief District Court Judges. The act is effective when it becomes law. Under current law, magistrates have the authority to dispose of various types of infractions and misdemeanor cases. (See statute below).

§ 7A-273. Powers of magistrates in infractions or criminal actions.

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, 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).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1286
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/27/99

Short Title: Mass Gatherings. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE EXEMPTION FROM THE "MASS GATHERINGS" STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-252(b), as amended by Section 1 of S.L. 1999-3, reads as rewritten:

"(b) The provisions of this Part do not apply to a permanent ~~stadiums~~ stadium with an adjacent ~~campgrounds~~ campground that ~~host~~ hosts an annual ~~events attracting~~ event that has attracted crowds in excess of 70,000 people. The term 'stadium' includes speedways and dragways."

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

HOUSE BILL 1286: Mass Gatherings.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Goodwin
Date:	May 11, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Third Edition		

SUMMARY: ***House Bill 1286 would add 2 features to a new exemption from the "mass gatherings" statute for stadiums with adjacent campgrounds that have large annual events. The bill would provide that an annual event that has attracted more than 70,000 people would trigger the exemption, not only one that attracts 70,000 people every year. The bill would also clarify that the term "stadium" as used in the Mass Gatherings statute would apply to dragways. Together the changes would provide that dragways with adjacent campgrounds hosting annual events that have attracted more than 70,000 people would be exempt from the mass gathering statute.***

CURRENT LAW: The public health statutes contain a provision regulating "mass gatherings." It was enacted in 1971in the era of big music conventions such as Woodstock. The provision defines a "mass gathering" as any assembly of 5,000 people or more in an open space or open air for more than 24 hours. It does not include assemblies in permanent buildings or permanent structures. Each mass gathering requires a permit, liability insurance, and a performance bond. In addition, mass gatherings are subject to several public health, environmental, and related regulations.

In March 1999 the General Assembly enacted an exemption to the mass gathering statute. It exempted any area with a permanent stadium and adjacent campgrounds that hosts annual events attracting more than 70,000 people. It was intended to exempt the Charlotte and Rockingham speedways. The statute had not been applied to crowds gathering around those stadiums for races until the question was raised last year.

BILL ANALYSIS: The bill would amend this year's exemption from the mass gatherings statute to say that stadiums would qualify if they host annual events that have attracted 70,000. If the event has attracted 70,000 in the past, it would not have to attract 70,000 every year in order to qualify for the exemption.

The bill also adds that a stadium includes a dragway. This is intended to make clear that the dragway across U.S. 1 from the Rockingham speedway is covered by the exemption.

EFFECTIVE DATE: The bill would be effective when it becomes law.

This summary was substantially contributed to by Bill Gilkeson.

H1286-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 818

Short Title: Rule 609 Impeachment Evidence. (Public)

Sponsors: Representatives Hensley; and Blue.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE EVIDENCE CODE, CHAPTER 8C OF THE GENERAL STATUTES, TO MAKE ADMISSIBLE FOR THE PURPOSES OF IMPEACHMENT EVIDENCE OF A WITNESS' CONVICTION OF A FELONY OR CLASS A1, CLASS 1, OR CLASS 2 MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8C-1, Rule 609(a) of the Evidence Code, reads as rewritten:

"(a) General rule. -- For the purpose of attacking the credibility of a witness, evidence that ~~he~~ the witness has been convicted of a ~~crime punishable by more than 60 days confinement~~ felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited from ~~him~~ the witness or established by public record during cross-examination or thereafter."

Section 2. This act becomes effective December 1, 1999; and, consistent with G.S. 8C-1, Rule 1101(a), shall apply to all actions and proceedings in the courts of this State.

HOUSE BILL 818:
Amend Rule 608: Impeachment Evidence.

BILL ANALYSIS

Committee: Senate Judiciary I
Date: May 11, 1999
Version: First Edition

Introduced by: Representative Hensley
Summary by: O. Walker Reagan, Committee Co-Counsel

SUMMARY: House Bill 818 amends the Rules of Evidence relative to the admissibility of evidence of a prior criminal conviction for impeaching the testimony of a witness by making it applicable to all felonies and Classes A1, 1 and 2 misdemeanors instead of just crimes punishable by more than 60 days.

CURRENT LAW: Current law requires that in order to be admissible for impeachment purposes, the prior conviction must have been for a crime punishable by more than 60 days confinement. This currently applies to all felonies from Level IV prior record Class I and up and to Level II and III prior record for Class A1 misdemeanors and Level III prior record level for Class1 misdemeanors.

BILL ANALYSIS: House Bill 818 would amend Rule 609(a) of the Rules of Evidence, codified in Chapter 8 of the General Statutes, by permitting the admission of evidence of prior criminal convictions if the conviction was for any felony or any ClassA1, 2 or 3 misdemeanor. This bill will add Levels I-III prior record for Class I felonies and Level I of Class A1 misdemeanors, Levels I and II of Class 1 misdemeanors, and all Levels of Class 2 misdemeanors to the list of prior convictions for which can be used to impeach the testimony of a person.

BACKGROUND: Prior to Structured Sentencing in 1994, under Fair Sentencing, conviction of an offense punishable by more than 60 days confinement was deemed an aggravating factor for sentencing. This factor was used as a benchmark for determining if a crime was serious enough to warrant its being used to call into question the credibility of a witness. The 60-day standard was dropped under Structured Sentencing as an aggravating factor in sentencing. Under Structured Sentencing some Class I felony levels are not punishable by more than 60 days while some Class A1 and Class I levels are punished by more than 60 days.

EFFECTIVE DATE: The bill becomes effective December 1, 1999 and consistent with Rule 1101(a) applies to all actions and proceedings in the courts of this State.

Rule 609. Impeachment by evidence of conviction of crime.

(a) General rule. - For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime punishable by more than 60 days confinement shall be admitted if elicited from him or established by public record during cross-examination or thereafter.

(b) Time limit. - Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon. - Evidence of a conviction is not admissible under this rule if the conviction has been pardoned.

(d) Juvenile adjudications. - Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal. - The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

(1983, c. 701, s. 1.)

Rule 1101. Applicability of rules.

(a) Proceedings generally. - Except as otherwise provided in subdivision (b) or by statute, these rules apply to all actions and proceedings in the courts of this State.

(b) Rules inapplicable. - The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary Questions of Fact. - The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand Jury. - Proceedings before grand juries.

(3) Miscellaneous Proceedings. - Proceedings for extradition or rendition; first appearance before district court judge or probable cause hearing in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise.

(4) Contempt Proceedings. - Contempt proceedings in which the court is authorized by law to act summarily.

(1983, c. 701, s. 1; 1983 (Reg. Sess., 1984), c. 1037, s. 14; 1985, c. 509, s. 2.)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, May 11, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **818** Rule 609 Impeachment Evidence
Sequential Referral: None
Recommended Referral: None

H.B. **870** Magist. Accept Waiver/Vehicle Viol.
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**1286** Mass Gatherings
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign.

(1)

VISITOR REGISTRATION SHEET

J-1

Name of Committee

5-11-99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NCSDA
Ian Rose	UNC
John Phelps	NCLM
LARRY STALLINGS	NC DOT – RALEIGH –
Rick Sappie	NCDOT
Nat McBride	~~NDA~~
MT Burnette	GACPD
Hal Miller	NCACCT

MINUTES
SENATE JUDICIARY I COMMITTEE
MAY 18, 1999

The Senate Judiciary I Committee met on May 18, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Soles, Acting Chairman, called the meeting to order and recognized Representative Wright to explain **House Bill 143 – AN ACT TO INCREASE THE FINE RELATED TO UNLAWFUL PARKING IN HANDICAPPED PARKING SPACES, AND TO REQUIRE THAT SIGNS BE PLACED ON HANDICAPPED PARKING SPACES.**

Senator Carpenter moved to give House Bill 143 a favorable report. The motion carried by a majority voice vote.

Representative Culpepper was recognized to explain **House Bill 226 – AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE ADDITIONAL INFORMATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.**

Doris Bray, Chairman of the General Statutes Commission, was recognized to speak on the bill.

Senator Wellons moved to give House Bill 226 a favorable report. The motion carried by a majority voice vote.

Representative Culpepper was recognized to explain **House Bill 202 – 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.**

A Proposed Senate Committee Substitute to House Bill 202 was given out to the Committee members for information purposes only. It was not adopted at this time and no vote was taken.

There being no further business, the meeting adjourned.

Sen. R. C. Soles, Jr., Vice Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, May 18, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

HB 143	Handicapped Parking Fines	Wright
HB 202	Amend Professional Corp. Act	Culpepper/Jeffus
HB 226	Foreclosure Notice	Culpepper
HB 517	Stop Threats/Acts of School Violence	Moore
HB 924	Community Mediation Centers	Nesbitt

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - May 18, 1999

HB 143	Handicapped Parking Fines	Wright
HB 202	Amend Professional Corp. Act	Culpepper/Jeffus
HB 226	Foreclosure Notice	Culpepper
HB 517	Stop Threats/Acts of School Violence	Moore
HB 924	Community Mediation Centers	Nesbitt

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 143
Committee Substitute Favorable 4/22/99
Third Edition Engrossed 4/28/99

Short Title: Handicapped Parking Fines. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FINE RELATED TO UNLAWFUL PARKING IN HANDICAPPED PARKING SPACES, AND TO REQUIRE THAT SIGNS BE PLACED ON HANDICAPPED PARKING SPACES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-37.6(f) reads as rewritten:

"(f) Penalties for Violation. --

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of ~~at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00)~~ at least one hundred dollars ($100.00) but not more than two hundred fifty dollars ($250.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) but not more than ~~one hundred dollars ($100.00)~~ two hundred fifty dollars ($250.00) and whenever evidence shall be presented in any court of the fact that a nonconforming sign is being used it shall be prima facie evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where the nonconforming sign is located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter 74E, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or negligently damaged in the removal from the space to a place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies."

Section 2. G.S. 20-37.6(d) reads as rewritten:

"(d) Designation of Parking Spaces. -- ~~Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30.~~ Parking spaces for handicapped persons on streets and public vehicular areas shall be designated by free-standing signs, no less than 72 inches from the ground or, signs, placed at the same height, attached to a building, fence, or other structure. A sign designating a parking space for handicapped persons shall state the maximum penalty for parking in the space in violation of the ~~law.~~ law and shall comply with G.S. 136-30."

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

HOUSE BILL 143:
Handicapped Parking Fines

BILL ANALYSIS

Committee:	Senate J1	**Introduced by:**	Rep. Wright
Date:	May 11, 1999	**Summary by:**	Jo B. McCants
Version:	3		Committee Co-Counsel

SUMMARY: ***This bill increases the fine for: 1) unlawfully parking in a handicapped space; 2) the unauthorized use of a handicap license plate or placard; 3) obstructing a curb or ramp cut for handicapped persons; and 4) improperly designating handicapped parking spaces. The fine is increased from a maximum of $100 to a maximum of $250.***

BILL ANALYSIS:

Section 1. Section 1 increases the fine for unlawfully parking in a handicapped space, the unauthorized use of a handicap license plate or placard, obstructing a curb or ramp cut for handicapped persons, and improperly designating handicapped parking spaces. The fine for each of these offenses would be at **least** one hundred dollars ($100), **but not more than** two hundred fifty ($250). Under current law, the fine for these offenses is **at least** fifty dollars ($50), **but not more than** one hundred dollars ($100).

Section 2. Section 2 requires all parking spaces for handicapped persons to be designated by free-standing signs, no less than 72 inches from the ground, or signs, placed at the same height, attached to a building, fence, or other structure and comply with G.S. 136-30 (see statute below).

Section 3. The act becomes effective on December 1, 1999.

§ 136-30. Uniform signs and other traffic control devices on highways, streets, and public vehicular areas.

(a) State Highway System. - The Department of Transportation may number and mark highways in the State highway system. All traffic signs and other traffic control devices placed on a highway in the State highway system must conform to the Uniform Manual. The Department of Transportation shall have the power to control all signs within the right-of-way of highways in the State highway system. The Department of Transportation may erect signs directing persons to roads and places of importance.

(b) Municipal Street System. - All traffic signs and other traffic control devices placed on a municipal street system street must conform to the appearance criteria of the Uniform Manual. All traffic control devices placed on a highway that is within the corporate limits of a municipality but is part of the State highway system must be approved by the Department of Transportation.

(c) Public Vehicular Areas. - Except as provided in this subsection, all traffic signs and other traffic control devices placed on a public vehicular area, as defined in G.S. 20-4.01, must conform to the Uniform Manual. The owner of private property that contains a public vehicular area may place on the property a traffic control device, other than a sign designating a parking space for handicapped persons, as defined in G.S. 20-37.5, that differs in material from the uniform device but does not differ in shape, size, color, or any other way from the uniform device. The owner of private property that contains a public vehicular area may place on the property a sign designating a parking space for handicapped persons that differs in material and color from the uniform sign but does not differ in shape, size, or any other way from the uniform device.

(d) Definition. - As used in this section, the term "Uniform Manual" means the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the United States Department of Transportation, and any supplement to that Manual adopted by the North Carolina Department of Transportation.

(e) Exception for Public Airport Traffic Signs. - Publicly owned airports, as defined in Chapter 63 of the General Statutes, shall be exempt from the requirements of subsections (b) and (c) of this section with respect to informational and directional signs, but not with respect to regulatory traffic signs.

§ 20-37.6. Parking privileges for handicapped drivers and passengers.

(a) General Parking. - Any vehicle that is driven by or is transporting a person who is handicapped and that displays a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated as restricted to vehicles driven by or transporting the handicapped.

(b) Handicapped Car Owners; Distinguishing License Plates. - If the handicapped person is a registered owner of a vehicle, the owner may apply for and display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive one removable windshield placard.

(c) Handicapped Drivers and Passengers; Distinguishing Placards. - A handicapped person may apply for the issuance of a removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. When the removable windshield or temporary removable windshield placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division shall establish procedures for the issuance of the placards and may charge a fee sufficient to pay the actual cost of issuance, but in no event less than five dollars ($5.00) per placard.

(c1) Application and Renewal; Physician's Certification. - The initial application for a distinguishing license plate, removable windshield placard, or temporary removable windshield placard shall be accompanied by a certification of a licensed physician, ophthalmologist, or optometrist or of the Division of Services for the Blind that the applicant is handicapped. The application for a temporary removable windshield placard shall contain additional certification to include the period of time the certifying authority determines the applicant will have the disability. Distinguishing license plates shall be renewed annually, but subsequent applications shall not require a medical certification that the applicant is handicapped. Removable windshield placards shall be renewed every five years, and the renewal shall

require a medical recertification that the person is handicapped. Temporary removable windshield placards shall expire no later than six months after issuance.

(c2) Existing Placards; Expiration; Exchange for New Placards. -. All existing placards shall expire on January 1, 1992. No person shall be convicted of parking in violation of this Article by reason of an expired placard if the defendant produces in court, at the time of trial on the illegal parking charge, an expired placard and a renewed placard issued within 30 days of the expiration date of the expired placard and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. Existing placards issued on or after July 1, 1989, may be exchanged without charge for the new placards.

(c3) It shall be unlawful to sell a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard issued pursuant to this section. A violation of this subsection shall be a Class 2 misdemeanor and may be punished pursuant to G.S. 20-176(c) and (c1).

(d) Designation of Parking Spaces. - Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons shall state the maximum penalty for parking in the space in violation of the law.

(d1) Repealed by Session Laws 1991, c. 530, s. 4.

(e) Enforcement of Handicapped Parking Privileges. - It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons when the vehicle does not display the distinguishing license plate, removable windshield placard, or temporary removable windshield placard as provided in this section, or a disabled veteran registration plate issued under G.S. 20-79.4;

(2) For any person not qualifying for the rights and privileges extended to handicapped persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, removable windshield placard, or temporary removable windshield placard issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas.

(f) Penalties for Violation. -

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that a nonconforming sign is being used it shall be prima facie evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where the nonconforming sign is located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter 74E, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or negligently damaged in the removal from the space to a place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 226*
Committee Substitute Favorable 3/22/99
Third Edition Engrossed 3/25/99

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 foreclosure proceedings filed on or after that date.

HOUSE BILL 226:
Foreclosure Notice.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Culpepper
Date:	May 18, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Third Edition		

SUMMARY: ***House Bill 226 amends the mortgage foreclosure notice law to add as an additional requirement that prior to the notice of the foreclosure hearing being given, the holder of the mortgage must give the debtor written notice of the amount of the principal and interest that is owed, together with the daily interest accruing on the outstanding balance and other expenses owed by the debtor to the holder. The bill also allows the agent of the holder to rely on confirmation by the holder of the outstanding balance, and any dispute over the notice of the outstanding amount or the amount itself shall not be considered at the foreclosure hearing. The bill is a recommendation of the General Statutes Commission.***

CURRENT LAW: Current law does not require that notice required under this bill be given to the debtor as part of the foreclosure process.

BILL ANALYSIS: Section 1 of the bill would amend G.S. 45-21.16, which is the law governing the notice and hearing requirements of the mortgage foreclosure statutes, to require that the notice of the foreclosure hearing state that the mortgage holder has given the debtor a written statement within 30 days prior to the notice of the amount of the outstanding principal and interest believed by the holder to be owing, together with the daily interest charge that continues to accrue against the outstanding balance, and any expenses the holder contends are owed by the debtor in conjunction with the mortgage and foreclosure.

Section 2 also adds another subsection to G.S. 45-21.16 to permit an agent of the holder to rely on written confirmation from the holder as to the amounts owned under Section 1 of the bill. This section also clarifies that the issues to be considered by the clerk at the foreclosure hearing do not include issues related to the written statement required under Section 1.

EFFECTIVE DATE: The bill becomes effective January 1, 2000 and applies to foreclosure proceedings filed on or after that date.

§ 45-21.16. Notice and hearing.

(a) The mortgagee or trustee granted a power of sale under a mortgage or deed of trust who seeks to exercise such power of sale shall file with the clerk of court a notice of hearing in accordance with the terms of this section. After the notice of hearing is filed, the notice of hearing shall be served upon each party entitled to notice under this section. The notice shall specify a time and place for the hearing before the clerk of court and shall be served not less than 10 days prior to the date of such hearing. The notice shall be served and proof of service shall be made in any manner provided by the Rules of Civil Procedure for service of summons, including service by registered mail or certified mail, return receipt requested. However, in those instances that publication would be authorized, service may be made by posting a notice in a conspicuous place and manner upon the property not less than 20 days prior to the date of the hearing, and if service upon a party cannot be effected after a reasonable and diligent effort in a manner authorized above, notice to such party may be given by posting the notice in a conspicuous place and manner upon the property not less than 20 days prior to the date of hearing. Service by posting may run concurrently with any other effort to effect service. The notice shall be posted by the sheriff. In the event that the service is obtained by posting, an affidavit shall be filed with the clerk of court showing the circumstances warranting the use of service by posting.

If any party is not served or is not timely served prior to the date of the hearing, the clerk shall order the hearing continued to a date and time certain, not less than 10 days from the date scheduled for the original hearing. All notices already timely served remain effective. The mortgagee or trustee shall satisfy the notice requirement of this section with respect to those parties not served or not timely served with respect to the original hearing. Any party timely served, who has not received actual notice of the date to which the hearing has been continued, shall be sent the order of continuance by first-class mail at his last known address.

(b) Notice of hearing shall be served in a manner authorized in subsection (a) upon:

(1) Any person to whom the security interest instrument itself directs notice to be sent in case of default.

(2) Any person obligated to repay the indebtedness against whom the holder thereof intends to assert liability therefor, and any such person not notified shall not be liable for any deficiency remaining after the sale.

(3) Every record owner of the real estate whose interest is of record in the county where the real property is located at the time the notice of hearing is filed in that county. The term "record owner" means any person owning a present or future interest in the real property, which interest is of record at the time that the notice of hearing is filed and would be affected by the foreclosure proceeding, but does not mean or include the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, judgment, mechanic's or materialman's lien, or other lien or security interest in the real property. Tenants in possession under unrecorded leases or rental agreements shall not be considered record owners.

(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.

(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.

(d) The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b), then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply.

(d1) The act of the clerk in so finding or refusing to so find is a judicial act and may be

appealed to the judge of the district or superior court having jurisdiction at any time within 10 days after said act. Appeals from said act of the clerk shall be heard de novo. If an appeal is taken from the clerk's findings, the appealing party shall post a bond with sufficient surety as the clerk deems adequate to protect the opposing party from any probable loss by reason of appeal; and upon posting of the bond the clerk shall stay the foreclosure pending appeal.

(e) In the event of an appeal, either party may demand that the matter be heard at the next succeeding term of the court to which the appeal is taken which convenes 10 or more days after the hearing before the clerk, and such hearing shall take precedence over the trial of other cases except cases of exceptions to homesteads and appeals in summary ejectment actions, provided the presiding judge may in his discretion postpone such hearing if the rights of the parties or the public in any other pending case require that such case be heard first. In those counties where no session of court is scheduled within 30 days from the date of hearing before the clerk, either party may petition any regular or special superior court judge resident in a district or assigned to hold courts in a district where any part of the real estate is located, or the chief district judge of a district where any part of the real estate is located, who shall be authorized to hear the appeal. A certified copy of any order entered as a result of the appeal shall be filed in all counties where the notice of hearing has been filed.

(f) Waiver of the right to notice and hearing provided herein shall not be permitted except as set forth herein. In any case in which the original principal amount of indebtedness secured was one hundred thousand dollars ($100,000), or more, any person entitled to notice and hearing may waive after default the right to notice and hearing by written instrument signed and duly acknowledged by such party. In all other cases, at any time subsequent to service of the notice of hearing provided above, the clerk, upon the request of the mortgagee or trustee, shall mail to all other parties entitled to notice of such hearing a form by which such parties may waive their rights to the hearing. Upon the return of the forms to the clerk bearing the signatures of each such party and that of a witness to each such party's signature (which witness shall not be an agent or employee of the mortgagee or trustee), the clerk in his discretion may dispense with the necessity of a hearing and proceed to issue the order authorizing sale as set forth above.

(g) Any notice, order, or other papers required by this Article to be filed in the office of the clerk of superior court shall be filed in the same manner as a special proceeding.

(1975, c. 492, s. 2; 1977, c. 359, ss. 2-10; 1983, c. 335, s. 1; 1983 (Reg. Sess., 1984), c. 1108, ss. 1, 2; 1993, c. 305, s. 8; 1995, c. 509, s. 135.1(g).)

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: May 12, 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. If 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.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, May 19, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **226** Foreclosure Notice/AB
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 202
Committee Substitute Favorable 3/22/99

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

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H202-CSRU-002
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 202
THIS IS A DRAFT 12-MAY-99 15:33:09
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, TO ALLOW NONLICENSEES TO OWN UP TO FORTY-NINE PERCENT OF THE SHARES OF A PROFESSIONAL CORPORATION RENDERING CERTIFIED PUBLIC ACCOUNTANT SERVICES, AND TO EXEMPT CERTIFIED PUBLIC ACCOUNTANTS WHO ARE MEMBERS OF THE GENERAL ASSEMBLY FROM CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS.

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),~~ subsections (a1) and (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.

(a1) Any person may own up to forty-nine percent of the stock of a professional corporation rendering services under Chapter 93 of the General Statutes as long as:

(1) Licensees continue to own and control voting stock that represents at least fifty-one percent of the votes entitled to be cast in the election of directors of the professional corporation; and

(2) All licensees who perform professional services on behalf of the corporation comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

~~(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.~~ aggregate; or

d. With respect to a professional corporation rendering services under Chapter 93 of the General Statutes, are persons who own not more than forty-nine percent of the stock in the professional corporation as long as:

1. Individuals who meet the requirements of sub-subdivision a. or b. of this subdivision own and control voting stock that represents at least fifty-one percent of the votes entitled to be cast in the election of directors of the professional corporation; and

2. All licensees who perform professional services on behalf of the corporation in this State comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(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 successor section), is deemed for purposes of this section to be an individual licensee if at least one trustee of the plan is a licensee and all other trustees are licensees or are individuals who are licensed under the laws of a state in which the corporation maintains an office to perform at least one of the professional services, as defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes, rendered by the corporation.

(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. G.S. 93-12(8b) reads as rewritten:

"(8b) To formulate rules ~~and regulations~~ for the continuing professional education of all persons holding the certificate of certified public accountant, subject to the following provisions:

a. After January 1, 1983, any person desiring to obtain or renew a certificate as a certified public accountant must offer evidence satisfactory to the Board that ~~such~~ the person has complied with the continuing professional education requirement approved by the Board. The Board may grant a conditional license for not more than 12 months for persons who are being licensed for the first time, or moving into North Carolina, or for other good cause, in order that ~~such~~ the person may comply with the continuing professional education requirement.

b. The Board shall ~~promulgate rules and regulations~~ adopt rules for the administration of the continuing professional education requirement with a minimum number of hours of 20 and a maximum number of hours of 40 per year, and the Board may exempt persons who are retired or inactive from ~~said~~ the continuing professional education requirement. The Board may also permit any certified public accountant to accumulate hours of continuing professional education in any calendar year of as much as two additional years annual requirement in advance of or subsequent to the required calendar year.

c. Any applicant who offers satisfactory evidence on forms promulgated by the Board that ~~he~~ the applicant has participated in a continuing professional education program of the type required by the Board shall be deemed to have complied with this ~~section.~~ subdivision.

d. All members of the General Assembly are exempt from the continuing professional education requirement adopted by the Board."

Section 4. This act is effective when it becomes law.

HOUSE BILL 202:
Amend Professional Corporation Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Culpepper
Date:	May 18, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Senate PCS H202-CSRU-002		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 202 would amend the Professional Corporation Act to permit stock owned by a qualified retirement plan to qualify as stock held by a licensee for certain professional corporations and to permit 49% of a professional CPA corporation to be owned by a non-CPA. The bill also will exempt members of the General Assembly who are certified public accountants from the CPA annual continuing education requirements.***

CURRENT LAW: The general law for professional corporations is that the stock of the corporation must all be owned by a professional licensed in the field the corporation is authorized to practice in. Five professions have an exception to this rule, and for these professions (architects, landscape architects, engineers, surveyors, and geologist) only two-thirds of the stock is required to be held by licensees. The stock of a professional corporation of certified public accountants can only be held by CPA's as individuals. All CPA's are required to have 40 hours of continuing education a year.

BILL ANALYSIS: Section 1 of the bill would amend G.S. 55B-6 of the Professional Corporation Act to permit stock in a professional corporation of architects (Chapter 83A), landscape architects (Chapter 89A), engineers and land surveyors (Chapter 89C) and geologists (Chapter 89E) to be held by a qualified employee retirement plan provided the plan's trustees are all licensees. This section also adds a new subsection to permit up to 49% of the stock in a professional certified public accountant corporation to be held by non-CPA's, including other corporations, partnerships, or other business entities, provided that all professional services performed on behalf of the corporation must be performed by licensed CPA's.

Section 2 amends the Foreign Professional Corporation Act to make conforming changes to that act to reflect the changes made in Section 1 of the bill, except that only one trustee of a qualified employee retirement plan is required to be licensed in North Carolina. This section would also permit a foreign professional corporation to operate in North Carolina even thought the corporation is authorized in its home state to offer a broader range of services than is permitted under NC law, provided that the services offered in this State are limited to those services permitted to be offered by NC professional corporations.

Section 3 will exempt CPA' s serving in the General Assembly from the continuing education requirements applicable to all other CPA's. Attorney's who are members of the General Assembly have a similar exemption from their continuing legal education requirements.

EFFECTIVE DATE: The bill 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: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: May 12, 1999

RE: House Bill 202 (Amend Professional Corporation Act)

As recommended by the General Statutes Commission, this bill primarily amends G.S. 55B-6 and G.S. 55B-16 with respect to stock ownership by qualified employee retirement plans in certain listed fields.

G.S. 55B-6 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 bill as recommended by the Commission adds a new provision to G.S. 55B-6(a) to allow 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. Stated differently, 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. G.S. 55B-16, which applies to professional corporations incorporated in other states that wish to qualify to do business in this State, contains similar restrictions, with similar exceptions, and the bill accordingly includes a similar amendment to that statute (the new subsection (b1)).

The bill also contains stylistic amendments to G.S. 55B-6(a) and (b) and G.S. 55B-16(c) and an amendment to G.S. 55B-16(b)(2) that are recommended by the Commission. The stylistic amendments update the language and are not intended to be substantive. The amendment to G.S. 55B-16(b)(2) allows 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; the foreign professional corporation's activities in this State, however, are limited to those that domestic professional corporations may perform in this State.

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

5/18/99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
LESLIE RATLIFF	NC DISPUTE RESOLUTION COMM
ANN McCOLL	NCASA
Scott Brady	Mediation Network
Andy Little	NC BAR ASSOCIATION
LAO RUBENS	CJPC
[illegible] PEDDUE	ZDA, PA
Gardner Payne	Governor's Office
Liz Hartsell	NC Bar Association
[illegible]	NC Fraternal Order of Police
John Phelps	NCLM
Martha G Hass	DOA
Mat Osborne	AOC
VL McBride	NCAA
Ray Dorr	Conference of DA's
David Rotondi	Independent Weekly
Lucius PULLEN	ATTORNEY

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kim D. Hunell	Gov's office
Adam Hines	Cabarrus Health Alliance
Melissa Lovell	DOJ
Stephanie Hobbs	Gen. Assembly

MINUTES
SENATE JUDICIARY I COMMITTEE
MAY 20, 1999

The Senate Judiciary I Committee met on May 20, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Soles, Acting Chairman, called the meeting to order and recognized Senator Dalton to explain **House Bill 517 – AN ACT INCREASING THE CRIMINAL PENALTY FOR MAKING A BOMB THREAT OR PERPETRATING A HOAX BY PLACING A FALSE BOMB AT SCHOOL, MAKING PARENTS CIVILLY LIABLE FOR CHILDREN WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, REQUIRING SCHOOLS TO SUSPEND FOR 365 DAYS STUDENTS WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, DIRECTING THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE ISSUE OF STUDENTS WHO MAKE OR CARRY OUT THREATS OF VIOLENCE DIRECTED AT SCHOOLS OR THE PERSONS IN THE SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO STUDY THE COMPUTATION OF DROPOUT RATES FOR THE ABCs PROGRAM** in the absence of Representative Moore, the bill sponsor.

Senator Clodfelter moved to adopt a Proposed Committee Substitute to House Bill 517 for discussion. The motion carried by a majority voice vote.

Mike Ward, Superintendent of Public Instruction, was recognized to speak on the bill.

Senator Rand moved to amend the Proposed Committee Substitute on Page 6, Line 19. The motion carried by a majority voice vote. (Amendment attached.)

Senator Wellons move to amend the Proposed Committee Substitute on Page 6, Line 29. The motion carried by a majority voice vote. (Amendment attached.)

Senator Wellons moved to give the Proposed Committee Substitute to House Bill 517 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

R. C. Soles Jr.

Sen. R. C. Soles, Jr., Vice Chairman

Susan M. Moore

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

REVISED

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, May 20, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

HB 517	Stop Threats/Acts of School Violence	Moore
HB 924	Community Mediation Centers	Nesbitt

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - May 20, 1999

HB 517	Stop Threats/Acts of School Violence	Moore
HB 924	Community Mediation Centers	Nesbitt

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 517
Committee Substitute Favorable 4/27/99
Senate Education/Higher Education Committee Substitute Adopted 5/5/99
Senate Education/Higher Education Committee Substitute #2 Adopted 5/12/99

Short Title: Stop Threats/Acts of School Violence. (Public)

Sponsors:

Referred to:

March 22, 1999

A BILL TO BE ENTITLED

AN ACT INCREASING THE CRIMINAL PENALTY FOR MAKING A BOMB THREAT OR PERPETRATING A HOAX BY PLACING A FALSE BOMB AT SCHOOL, MAKING PARENTS CIVILLY LIABLE FOR CHILDREN WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, REQUIRING SCHOOLS TO SUSPEND FOR 365 DAYS STUDENTS WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, DIRECTING THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE ISSUE OF STUDENTS WHO MAKE OR CARRY OUT THREATS OF VIOLENCE DIRECTED AT SCHOOLS OR THE PERSONS IN THE SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO STUDY THE COMPUTATION OF DROPOUT RATES FOR THE ABCs PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-69.1 is amended by adding the following new subsection to read:

"(c) Any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-related activity on or off educational property any device designed to destroy or damage property by explosion, blasting, or burning, is guilty of a Class G felony. The court may order

any person convicted under this subsection to make restitution to the appropriate educational entity. In the event the person convicted under this subsection is a minor, the court may order the minor and the minor's parents or legal guardians to be evaluated for the need for family counseling or treatment and may order the minor and the minor's parents or legal guardians, at their expense, to cooperate with any recommended counseling or treatment. In addition, any educational entity may institute a civil action under G.S. 1-538.3 to recover damages. For purposes of this subsection, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board or other entity that administers and controls the educational property."

Section 2. G.S. 14-69.2 is amended by adding the following new subsection to read:

"(c) Any person who, with intent to perpetrate a hoax, secretes, places, or displays any device, machine, instrument, or artifact on educational property or at a school-related activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property is guilty of a Class G felony. The court may order any person convicted under this subsection to make restitution to the appropriate educational entity. In the event the person convicted under this subsection is a minor, the court may order the minor and the minor's parents or legal guardians to be evaluated for the need for family counseling or treatment and may order the minor and the minor's parents or legal guardians, at their expense, to cooperate with any recommended counseling or treatment. In addition, any educational entity may institute a civil action under G.S. 1-538.3 to recover damages. For purposes of this subsection, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board or other entity that administers and controls the educational property."

Section 3. Article 43 of Chapter 1 of the General Statutes is amended by adding the following new section to read:

"**§ 1-538.3. Civil liability for making a bomb threat affecting a school.**

(a) The parent or legal guardian, having the care, custody, and control of an unemancipated minor who commits an act punishable under G.S. 14-69.1(c) or G.S. 14-69.2(c), is civilly liable to the educational entity against whom a threat was made or a hoax was perpetrated if that parent or legal guardian knew or should have known of the likelihood of the child to commit such an act, had the opportunity and ability to control the child, and made no reasonable effort to correct or restrain the child from committing such an act. In an action brought against the parent or legal guardian under this section, the educational entity is entitled to recover the actual compensatory and consequential damages, together with reasonable attorneys' fees. For purposes of this section, the term 'educational entity' means the board or other entity that administers and controls the educational property.

(b) An action may be brought under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action.

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

Section 4. G.S. 115C-391 is amended by adding the following new subsection to read:

"(d3) A local board of education shall suspend for 365 days any student who knowingly makes a false report that there is located on school property or at a school-related activity on or off school property, a bomb, grenade, or powerful explosive as defined in G.S. 14-284.1. A local board of education also shall suspend for 365 days any student who perpetrates a hoax by use of a false bomb or other device on school property or at a school-related activity on or off school property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services."

Section 5. The Joint Legislative Education Oversight Committee, in consultation with the State Board of Education, the Office of Juvenile Justice, the Center for the Prevention of School Violence, and local boards of education, shall examine the issue of students who threaten to commit or who carry out acts of violence directed at schools and the persons who are present in the schools. As part of this study, the Committee shall: (i) evaluate current laws governing the discipline, suspension, and expulsion of these students; (ii) evaluate current criminal and juvenile laws to make sure local authorities are authorized to take immediate action and to ensure the consequences for these acts and threats are taken seriously; (iii) review how other states are approaching this issue; (iv) identify effective education practices to prevent these threats or acts of violence; and (v) consider any other issue it considers appropriate. The Committee may make recommendations, including necessary appropriations, to the 2000 Regular Session of the 1999 General Assembly.

Section 6.(a) The State Board of Education, in consultation with the Office of Juvenile Justice, the Department of Correction, and the Department of Community Colleges, shall study the method for computing dropout rates for the School-Based Management and Accountability Program (ABCs). The State Board of Education shall recommend whether the computation used to set the dropout rate for this purpose should include students who (i) transfer to a community college; (ii) are placed by the courts in a setting which provides educational opportunities; (iii) are expelled from school; (iv) do not return to school after a long-term suspension in accordance with a safe school plan; or (v) have been counted previously as dropouts. As a part of this study, the State Board of Education shall report, from data for the 1998-99 school year, the number of students in each of these categories. The State Board of Education shall examine whether it should continue to use other methods of computing the dropout rate for other purposes.

Section 6.(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 15, 1999, regarding its

recommendations as to the computation of the dropout rates for the ABCs accountability program. This report shall include the number of dropouts for the 1998-99 school year based on categories (i) and (iii)-(v) in subsection (a) of this section. The report also shall include the number of dropouts for the 1998-99 school year based on category (ii) in subsection (a) of this section if this information is available.

Section 7. This act becomes effective July 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H517-CSRU-005
PROPOSED SENATE JUDICIARY I COMMITTEE SUBSTITUTE
HOUSE BILL 517
THIS IS A DRAFT 19-MAY-99 21:02:19
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Stop Threats/Acts of School Violence. (Public)

Sponsors:

Referred to:

March 22, 1999

A BILL TO BE ENTITLED

AN ACT INCREASING THE CRIMINAL PENALTY FOR MAKING A BOMB THREAT OR PERPETRATING A HOAX BY PLACING A FALSE BOMB AT SCHOOL AND FOR BRINGING EXPLOSIVE DEVISES ON SCHOOL PROPERTY, MAKING PARENTS CIVILLY LIABLE FOR CHILDREN WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, REQUIRING SCHOOLS TO SUSPEND FOR 365 DAYS STUDENTS WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN FOR COMMITTING DESIGNATED ACTS, DIRECTING THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE ISSUE OF STUDENTS WHO MAKE OR CARRY OUT THREATS OF VIOLENCE DIRECTED AT SCHOOLS OR THE PERSONS IN THE SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO STUDY THE COMPUTATION OF DROPOUT RATES FOR THE ABCs PROGRAM.

The General Assembly of North Carolina enacts:

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

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

(a) ~~If~~ Except as provided in subsection (c) of this section, any person ~~shall,~~ who, by any means of communication to any person or group of persons, ~~make~~ makes a report, knowing or

having reason to know the ~~same to be~~ report is false, that there is located in any building, house or other structure whatsoever or any vehicle, aircraft, vessel or boat any device designed to destroy or damage the building, house or structure or vehicle, aircraft, vessel or boat by explosion, blasting or burning, ~~he shall~~ is be guilty of a Class H felony.

(b) Repealed by S.L. 1997-443, s. 19.25(cc).

(c) Any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-related activity on or off educational property any device designed to destroy or damage property by explosion, blasting, or burning, is guilty of a Class G felony. As part of restitution, the court may order a person convicted under this subsection to reimburse the affected educational entity for the costs resulting from the disruption or dismissal of school or school related activity arising from the false report. For purposes of this subsection, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board of education or other entity that administers and controls the educational property or the school-related activity.

(d) For purposes of this section, the term 'report' shall include making accessible to another person by computer."

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

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

(a) ~~If~~ Except as provided in subsection (c) of this section, any ~~person,~~ person who, with intent to perpetrate a hoax, ~~shall secrete, place or display~~ secretes, places, or displays any device, machine, instrument or artifact, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or ~~property, he shall be~~ property is guilty of a Class H felony.

(b) Repealed by S.L. 1997-443, s. 19.25(dd).

(c) Any person who, with intent to perpetrate a hoax, secretes, places, or displays any device, machine, instrument, or artifact on educational property or at a school-related activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property is guilty of a Class G felony. As part of restitution, the court may order any person convicted under this subsection to reimburse the affected educational entity for the costs resulting from the disruption or

dismissal of school or the school-related activity arising from the hoax. For purposes of this subsection, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board of education or other entity that administers and controls the educational property or the school-related activity."

Section 3. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. -- Any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, college, or university board of trustees, or directors for the administration of any public or private educational institution.

(2) Student. -- A person enrolled in a public or private school, college or university, or a person who has been suspended or expelled within the last five years from a public or private school, college or university, whether the person is an adult or a minor.

(3) Switchblade knife. -- A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. -- Any device enumerated in subsection ~~(b)~~ (b), (b1) or (d) of this section.

(b) It shall be a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any ~~kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1,~~ kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a Class F felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. This subsection shall not apply to fireworks.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any ~~kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S.~~

~~14-284.1,~~ kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a Class F felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. This subsection shall not apply to fireworks.

(d) It shall be a Class 1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), ~~and~~ firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a Class 1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), ~~and~~ firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property if:

(1) The person is not a student attending school on the educational property;

(2) The firearm is not concealed within the meaning of G.S. 14-269;

(3) The firearm is not loaded and is in a locked container, a locked vehicle, or a locked firearm rack which is on a motor vehicle; and

(4) The person does not brandish, exhibit, or display the firearm in any careless, angry, or threatening manner.

(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a

school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined in G.S. 115C-563(a)."

Section 4. If Senate Bill 57 of the 1999 General Assembly is enacted into law, G.S. 20-11(n1)(1)d. as enacted in Section 5 of Senate Bill 57, reads as rewritten:

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

1. The possession or sale of an alcoholic beverage or an illegal controlled substance on school property.

2. The possession or use on school property of a weapon or firearm that resulted in disciplinary action under G.S. 115C-391(d1) or that could have resulted in that disciplinary action if the conduct had occurred in a public school.

3. The making of a false report or perpetrating a hoax that resulted in disciplinary action under G.S. 115C-391(d3) or that could have resulted in that disciplinary action if the conduct had been committed by a student enrolled in a public school.

4. The physical assault on a teacher or other school personnel on school property."

Section 5. Article 43 of Chapter 1 of the General Statutes is amended by adding the following new section to read:

"**§ 1-538.3. Civil liability for making a bomb threat affecting a school.**

(a) The parent or individual legal guardian who has the care, custody, and control of an unemancipated minor is civilly liable to the educational entity against whom the minor has committed an

act set forth in this section. The parent or individual legal guardian shall be liable if the minor:

(1) by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-related activity on or off educational property any device designed to destroy or damage property by explosion, blasting, or burning; or

(2) with intent to perpetrate a hoax, secretes, places, or displays any device, machine, instrument, or artifact on educational property or at a school-related activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property.

The parent or individual legal guardian shall not be liable under this section if the parent or individual legal guardian did not know or could not have known of the child's likelihood to commit such an act, did not have the opportunity and ability to control the child, and either made a reasonable effort to correct or restrain the child from committing such an act, or notified the educational entity or an appropriate law enforcement agency of the false threat or hoax. In an action brought against the parent or legal guardian under this section, the educational entity is entitled to recover the actual compensatory and consequential damages resulting from the disruption or dismissal of school or the school-related activity arising from the false report or hoax. For purposes of this section, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board of education or other entity that administers and controls the educational property or the school-related activity.

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

Section 6. G.S. 115C-391(d1) reads as rewritten:

"(d1) A local board of education or superintendent shall suspend for 365 days any student who brings a weapon, as defined in ~~G.S. 14-269.2(b)~~ G.S. 14-269.2(b), G.S. 14-269.2(b1) and G.S. 14-269.2(g), onto ~~school~~ educational property. The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also

provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services."

Section 7. G.S. 115C-391 is amended by adding the following new subsection to read:

"(d3) A local board of education shall suspend for 365 days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-related activity on or off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, secretes, places, or displays any device, machine, instrument, or artifact on educational property or at a school-related activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1)."

Section 8. G.S. 115C-391(e) reads as rewritten:

"(e) A decision of a superintendent under subsection (c), (d1), ~~or (d2)~~ (d2), or (d3) of this section may be appealed to the local board of education. A decision of the local board upon this appeal or of the local board under subsection (d) or (d1) of this section is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision."

Section 9. The Joint Legislative Education Oversight Committee, in consultation with the State Board of Education, the Office of Juvenile Justice, the Center for the Prevention of School Violence, and local boards of education, shall examine the issue of students who threaten to commit or who carry out acts of violence directed at schools and the persons who are present in

the schools. As part of this study, the Committee shall: (i) evaluate current laws governing the discipline, suspension, and expulsion of these students; (ii) evaluate current criminal and juvenile laws to make sure local authorities are authorized to take immediate action and to ensure the consequences for these acts and threats are taken seriously; (iii) review how other states are approaching this issue; (iv) identify effective education practices to prevent these threats or acts of violence; and (v) consider any other issue it considers appropriate. The Committee may make recommendations, including necessary appropriations, to the 2000 Regular Session of the 1999 General Assembly.

Section 10.(a) The State Board of Education, in consultation with the Office of Juvenile Justice, the Department of Correction, and the Department of Community Colleges, shall study the method for computing dropout rates for the School-Based Management and Accountability Program (ABCs). The State Board of Education shall recommend whether the computation used to set the dropout rate for this purpose should include students who (i) transfer to a community college; (ii) are placed by the courts in a setting which provides educational opportunities; (iii) are expelled from school; (iv) do not return to school after a long-term suspension in accordance with a safe school plan; or (v) have been counted previously as dropouts. As a part of this study, the State Board of Education shall report, from data for the 1998-99 school year, the number of students in each of these categories. The State Board of Education shall examine whether it should continue to use other methods of computing the dropout rate for other purposes.

Section 10.(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 15, 1999, regarding its recommendations as to the computation of the dropout rates for the ABCs accountability program. This report shall include the number of dropouts for the 1998-99 school year based on categories (i) and (iii)-(v) in subsection (a) of this section. The report also shall include the number of dropouts for the 1998-99 school year based on category (ii) in subsection (a) of this section if this information is available.

Section 11. Sections 4, 7, 8, 9, 10.a, 10.b and 11 of this act are effective when this act becomes law and Section 7 applies to offenses committed on or after that date. Sections 1, 2, 3, and 6 of this act are effective on September 1, 1999 and apply to offenses committed on or after that date. Section 5 of

this act is effective September 1, 1999, and applies to causes of action arising on or after that date.

HOUSE BILL 517:
Stop Threats/Acts of School Violence

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Moore
Date:	May 20, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Fourth Edition -- PCS H517-CSRU-005		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 517 would increase the classification from a Class H felony to a Class G felony for making a bomb threat against a school or for perpetrating a hoax with a false bomb at a school; increase the classification from a Class I felony to a Class F felony for bringing an explosive device on school property; add suspension from school for making a false bomb threat or bomb hoax as a ground for losing driving privileges by a driver under age 18; make parents and legal guardians civilly liable for children who make these threats or perpetrate these hoaxes; require schools to suspend for 365 days any student who makes this threat or perpetrates this hoax; direct the Joint Legislative Education Oversight Committee to study the issue of students who make or carry out threats of violence directed at schools; and direct the State Board of Education to study its method of computing dropouts for the ABC's Program.***

NEW OFFENSES: Section 1 of House Bill 517 would make it a Class G felony to make a false report that a bomb or other explosive device is located on educational property or at a school-related activity on or off educational property. Section 2 would make it a Class G felony to intend to perpetrate a hoax by placing or displaying a device on educational property or at a school-related activity on or off educational property that causes any person to reasonably believe the device is a bomb or similar device. Educational property would be defined as any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, college, or university board of trustees, or directors for the administration of any public or private educational institution.

As part of restitution, the bill would authorize the court to order a person convicted of either crime to pay restitution to the appropriate educational entity for the costs resulting from the disruption or dismissal of school or a school-related activity due to the false report or hoax. An educational entity would be defined as the board of education or other entity that administers and controls the educational property. To cover threats made by posting a threat on an Internet web site, the term "report" is defined to include making accessible to another person by computer.

Under current law, making a bomb threat or perpetrating this type of hoax against any entity is a Class H felony.

Section 3 increases the punishment for possessing or carrying a stick of dynamite, bomb, grenade, mine or other explosive device on educational property, or causing, encouraging or aiding another person to do the same, from a Class I felony to a Class F felony. This section also clarifies that fireworks are not powerful explosives under this law and provides that possessing or carrying fireworks on educational property would be a Class 1 misdemeanor.

LOSE LICENSE: Section 4 would amend Senate Bill 57 - Lose Control/Lose Your License, as it passed the Senate, to require a person under age 18 to lose driving privileges for making a false bomb threat or perpetuating a bomb hoax on educational property. This provision would become effective if Senate Bill 57 is enacted into law.

CIVIL LIABILITY OF PARENTS: Section 5 would permit the educational entity affected by a bomb threat or hoax to file a civil action against the parents or individual legal guardians of a minor who made the threat or hoax against the school. If the parents or guardians are found liable, the educational entity could recover actual compensatory and consequential damages resulting from disruption or dismissal of school or a school-related activity due to the threat or hoax. The parents or guardians would not be liable if they (i) did not know or could not have known of the child's likelihood to commit such an act, (ii) did not have the opportunity and ability to control the child, and (iii) made a reasonable effort to correct or restrain the child from committing such an act or notified an appropriate law enforcement agency of the threat or hoax.

Under current law, a parent or legal guardian is strictly liable to another person for a maximum of $2000 in actual damages when a child maliciously or willfully injures that other person or destroys that person's property. (G.S. 1-538.1).

MANDATORY 365-DAY SUSPENSION: Section 7 would require local boards to suspend for 365 days any student who makes a false report that a bomb is located on educational property or at a school-related activity on or off educational property. It also would require local boards to suspend for 365 days any student who perpetrates a hoax by use of a false bomb or similar device on educational property or at a school-related activity on or off educational property. The board would be permitted to modify either requirement at the request of the superintendent on a case-by-case basis.

Currently, local boards are not required to take any action against these students. They may suspend these students for as long as the remainder of that school year. They could recommend alternative placements for these students. They also may expel (i.e., permanently remove) any student who is at least 14 years old and whose behavior indicates that his or her continued presence in school constitutes a clear threat to the safety of other students or employees.

ED OVERSIGHT STUDY: Section 9 would direct the Joint Legislative Education Oversight Committee to study, in consultation with the State Board of Education, the Office of Juvenile Justice, the Center for the Prevention of School Violence, and local boards, the issue of students who threaten to commit or who carry out acts of violence directed at schools and the people in the schools. The Committee would be directed to (i) evaluate current school discipline laws, criminal laws, and juvenile laws; (ii) review what other states are doing; (iii) identify effective educational practices to prevent these threats or acts; and (iv) consider any other appropriate issue. The Committee may report to the 2000 General Assembly.

DROPOUT COMPUTATION: Sections 10a and b would direct the State Board of Education to study how dropout rates are computed for the purpose of the School-Based Management and Accountability Program (ABCs). The State Board must recommend whether dropout rates should be computed to include students who: transfer to a community college; are placed by a court in a setting which provides

educational opportunities; are expelled; do not return to school after a suspension of at least 10 days; or have been previously counted as dropouts. By December 15, 1999, the State Board shall report to the Joint Legislative Education Oversight Committee its recommendations as to the computation of the dropout rates for the ABCs program. The report shall include the number of dropouts for the 1998-99 school year based on the above categories (the number of students who are placed by the courts only must be included if available).

EFFECTIVE DATES: The changes to Senate Bill 57 - Lose Control/Lose Your License, mandatory school suspension for bomb threats or hoaxes, and the studies provisions are effective when the bill becomes law. The school suspension provisions apply to offenses committed on or after that date.

The changes to the criminal statutes (bomb threat, bomb hoax, and explosives on school property) are effective September 1, 1999 and apply to offenses committed on or after that date.

The section creating civil liability for parents is effective September 1, 1999 and applies to causes of action arising on or after that date.

This summary was substantially contributed to by Robin Johnson.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 517 DATE 5-20-99

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

COMMITTEE SUBSTITUTE PCS-005

Rep.)
Sen.) RAND

1 moves to amend the bill on page 6, line 19
2 ( ) WHICH CHANGES THE TITLE
3 by INSERTING BETWEEN THE WORDS "OR" AND "COULD"
4 THE WORD "REASONABLY".
5
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19

SIGNED Tony Rand

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. 517 DATE 5-20-99

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

COMMITTEE SUBSTITUTE _____

Rep.) Wellons
Sen.)

moves to amend the bill on page 6, line 29

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

report or hoax. The total amount of compensatory and consequential damages awarded to a plaintiff against the parent or legal guardian shall not exceed one hundred thousand dollars ($100,000). For purposes of this section, the term":

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

REVISED

Monday, May 24, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 3

H.B.(SCS #2)	**517**	Stop Threats/Acts of School Violence	
		Draft Number:	PCS 3423
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

(1)

VISITOR REGISTRATION SHEET

Senate Judiciary I — 5-20-99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Brad Spreeden	DPI
Mike Ward	DPI
Ann Belcher	SBE
Jan Crotts	NCASA
Doug Lassiter	McCleer Consulting
Joe McCleer	" " "
[illegible]	AOC
Bill Wilson	NCHE
Neil Calhoon	NCAE
Harriet Reid	NCAE
DAVID POTORTI	INDEPENDENT WEEKLY
Barbara Wyse	Sierra Club
Lucille Dalton	NCSBA
Chris Minard	Education Committees
Joel Wilson	Sen. Lee

(2)

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

5-20-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
LE Hartsell	NC Bar Association
Rex Gore	Conference of DAs
Scott Bradley	Mediation Network of NC
Scott Hammack	N.C. A.T.L.
Craig Dix	OJJ
Deborah Ross	[illegible]
Melissa Lovell	DOJ
[illegible]	Governor's Office
Garrett Pierce	ZDA, PA
Roz Sawitt	[illegible]
Rachel Hawkins	Piedmont EMC (Visitor)
Jack Meeks	Meeks & Sims
R. G Breedlove	Piedmont EMC
[illegible]	Piedmont Emc
Talmadge Yancey	Piedmont E.M.C.

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

5-20-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Marian L. Poythress	Piedmont EMC
James Kirby	Piedmont E.M.C.
Alice Clayton	Piedmont EMC
Gary Wilkins	Piedmont E.M.C.
Sen. Garwood	Senate Ed. Comm.
[illegible]	Mellon Co
Hal Miller	NCAECT
Amanda Lamb	WRAL-TV
John Cox	WRAL-TV
Leslie Bevacqua	NCCBT
Ashley Westbrook	Governor's Office
Annette Edwards	Gov's Office
Jeanne Winner	NCSBA
Eddie Caldwell	EEBC

MINUTES
SENATE JUDICIARY I COMMITTEE
MAY 25, 1999

The Senate Judiciary I Committee met on May 25, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Hartsell to explain **Senate Bill 244 – AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.**

Senator Hartsell moved to adopt a Proposed Committee Substitute to Senate Bill 244 for discussion. The motion carried by a majority voice vote.

The following people were recognized to speak on the bill:

Douglas Lindholm, President/Exec. Dir. of the Committee on State Taxation
Leslie Bevacqua, NCCBI
Terry Allen, Administrator of the Escheats Fund (Treasurer's Office)
Doug Johnson, Attorney General's Office
Fran Preston, Executive Director of the N. C. Retail Merchants Association
Clifton Metcalf, with the University of North Carolina
Steve Brooks, Executive Director of the Education Assistance Authority
Julie Rice-Mallette – Study Financial Aid Officer, NCSU
Charles Heatherly, Deputy State Treasurer

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 244 a favorable report and re-refer it to the Finance Committee. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, May 25, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 244 Unclaimed Property Act Hartsell

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - May 25, 1999

SB 244	Unclaimed Property Act/AB	Hartsell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 244*

Short Title: Unclaimed Property Act/AB. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"**§ 116B-4. Claim for escheated property.**

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A.~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed.~~ The provisions of ~~G.S. 116B-38(b) and (c)~~ G.S. 116B-66(a), (c), (d), and (e) and G.S. 116B-67 shall apply to a claim under this ~~subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in ~~G.S. 116B-37,~~ G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47;~~ G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"**§ 116B-8. Employment of persons with specialized skills or knowledge.**

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate

legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"§ 116B-51. Short title.

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"§ 116B-52. Definitions.

In this Chapter:

(1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those

payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposit to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit

sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) '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.

(13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"**§ 116B-53. Presumptions of abandonment.**

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or

terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Gift certificate, three years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent (60%) of the certificate's face value;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, one year after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution.

"**§ 116B-54. Exclusion for forfeited reservation deposits.**

A forfeited reservation deposit is not abandoned property. For the purposes of this section the term 'reservation deposit' means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

"**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the administrator as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the

applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"**§ 116B-56. Rules for taking custody.**

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

a. The last known address of the person entitled to the property is in this State; or

b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to

be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge.

A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

"§ 116B-59. Notice by holders to apparent owners.

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"§ 116B-60. Report of abandoned property; certification by holders with tax return.

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the administrator by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of

Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"**§ 116B-61. Payment or delivery of abandoned property.**

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would not longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"**§ 116B-62. Preparation of list of owners by Treasurer.**

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars

($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"**§ 116B-63. Custody by State; recovery by holder; defense of holder.**

(a) In this section, payment or delivery is made in 'good faith' if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) a holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasure in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"§ 116B-65. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) a purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"**§ 116B-66. Claim of another state to recover property.**

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

"**§ 116B-67. Claim for property paid or delivered to the Treasurer.**

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the

claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

"§ 116B-68. Action to establish claim.

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant.

"§ 116B-69. Election to take payment or delivery.

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

"**§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.**

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"**§ 116B-71. Periods of limitation.**

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than 10 years after the holder filed a report with the Treasurer in which the holder specifically identified or should have identified the property or gave express notice to the Treasurer of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

"**§ 116B-72. Requests for reports and examination of records.**

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice

required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess against a holder who willfully failed to report or who made a fraudulent report the cost of the examination at the rate of two hundred dollars ($200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, that should have been but was not reported.

"**§ 116B-73. Retention of records.**

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"**§ 116B-74. Enforcement.**

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry,

or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"**§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions with other states.**

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"**§ 116B-76. Interest and penalties; waiver.**

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall

continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section , a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"**§ 116B-77. Agreement to locate property.**

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation in an amount greater than twenty-five percent (25%) of the actual value of the property recovered, or is otherwise unconscionable, is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

"**§ 116B-78. Transitional provisions.**

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"**§ 116B-79. Rules.**

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division.

The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the 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~~ 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."

Section 8. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or ~~29-15,~~ G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 9. G.S. 53-43.7(b)

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by the ~~lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(c);~~ G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him,~~ the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided,

however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S. 116B-74;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under G.S. 116B-72 and G.S. 116B-74, may include designation by general type or ~~class as authorized in G.S. 116B-39.~~ class."

Section 12. G.S. 116-209.3 reads as rewritten:

"**§ 116-209.3. Additional powers.**

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and

assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 244*
Proposed Committee Substitute S244-PCS1746-RU

Short Title: Unclaimed Property Act/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO THE ESCHEATS LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"**§ 116B-4. Claim for escheated property.**

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A.~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed.~~ The provisions of ~~G.S. 116B-38(b) and (e)~~ G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this ~~subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in ~~G.S. 116B-37,~~ G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47;~~ G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"**§ 116B-8. Employment of persons with specialized skills or knowledge.**

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep, management, sale and conveyance of property and

determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to ten percent (10%) of the final assessment."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"§ 116B-51. Short title.

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"§ 116B-52. Definitions.

In this Chapter:

(1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) '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.

(13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"**§ 116B-53. Presumptions of abandonment.**

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty

percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, one year after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution.

"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, prepaid calling cards, certain manufactured home buyer deposits, and certain credit balances.

(a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a

business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

(b) A gift certificate or electronic gift card is not unclaimed or abandoned property when the gift certificate or electronic gift card:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire;

(2) Bears no expiration date; or

(3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina.

(c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is not unclaimed or abandoned property.

(d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A or G.S. 143-143.21B is not unclaimed or abandoned property and is not subject to this Article.

(e) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned or unclaimed property. For purposes of this section, the term 'credit balances' means items such as overpayments or underpayments on the sale of goods or services.

"§ 116B-55. Contents of safe deposit box or other safekeeping depository.

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"§ 116B-56. Rules for taking custody.

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

a. The last known address of the person entitled to the property is in this State; or

b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this

State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge.

A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer,

the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

"**§ 116B-59. Notice by holders to apparent owners.**

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"**§ 116B-60. Report of abandoned property; certification by holders with tax return.**

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"**§ 116B-61. Payment or delivery of abandoned property.**

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"**§ 116B-62. Preparation of list of owners by Treasurer.**

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars ($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"**§ 116B-63. Custody by State; recovery by holder; defense of holder.**

(a) In this section, payment or delivery is made in 'good faith' if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"**§ 116B-65. Public sale of abandoned property.**

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"**§ 116B-66. Claim of another state to recover property.**

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state

subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

"§ 116B-67. Claim for property paid or delivered to the Treasurer.

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other

information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

"**§ 116B-68. Action to establish claim.**

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant.

"**§ 116B-69. Election to take payment or delivery.**

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

"**§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.**

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value

of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"**§ 116B-71. Periods of limitation.**

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than 10 years after the holder filed a report with the Treasurer in which the holder specifically identified property, should have but failed to identify property, or gave express notice to the Treasurer of a dispute regarding property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

"**§ 116B-72. Requests for reports and examination of records.**

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this

subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess, against a holder who made a fraudulent report, the cost of the examination at the rate of two hundred dollars ($200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported.

"§ 116B-73. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"§ 116B-73.1. Discretionary precompliance review.

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The Treasurer may charge the holder a precompliance review fee of up to five hundred dollars ($500.00) per day for conducting this review.

"§ 116B-74. Enforcement.

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the

Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"§ 116B-76. Interest and penalties; waiver.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection

(a) of this section , a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"**§ 116B-77. Agreement to locate property.**

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation in an amount greater than twenty-five percent (25%) of the actual value of the property recovered, or is otherwise unconscionable, is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

(f) Any person who enters into an agreement covered by this section with an owner shall register annually with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's federal identification number. A registration fee of one hundred dollars ($100.00) shall be

paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

"**§ 116B-78. Transitional provisions.**

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"**§ 116B-79. Rules.**

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and

shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the 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~~ 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."

Section 8. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or ~~29-15,~~ G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 9. G.S. 53-43.7(b)

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by the ~~lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(c);~~ G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him,~~ the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S. 116B-74;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under G.S. 116B-72 and G.S. 116B-74, may include designation by general type or ~~class as authorized in G.S. 116B-39.~~ class."

Section 12. G.S. 116-209.3 reads as rewritten:

"**§ 116-209.3. Additional powers.**

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the

Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000, and shall apply to property existing on or after that date. G.S. 116B-54(d), as enacted in Section 6 of this act, is intended to clarify and not change existing law.

SENATE BILL 244:
Unclaimed Property Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hartsell
Date:	May 24, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Com Sub S244-PCS1746-RU		

SUMMARY: The Proposed Committee Substitute for Senate Bill 244 would revised the current escheat and unclaimed property laws and would adopt the Uniform Unclaimed Property Act as promulgated by the National Conference of Commissioners on Uniform State Laws. The bill as originally introduced was a recommendation of the General Statutes Commission.

A detailed section by section summary of the bill as introduced has been prepared by the General Statutes Commission staff and is attached to this summary. Reference should be made to the General Statutes Commission's summary for detailed information on the bill. This summary highlights the proposed changes made in the Proposed Committee Substitute to the bill as originally introduced.

Page 3, lines 4 through 10 - Adds a provision that provides that persons employed by the Treasurer to assist with determining the sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as any employee of the Department of the State Treasurer who provides the same service. In addition, compensation paid based on a contingency fee is limited to 10% of the final assessment.

Page 6, lines 40 through page 7, line 2 - Is amended by providing that a gift certificate or electronic gift card with an expiration date is presumed to be abandoned three years after it was sold, and 60% of the unredeemed portion of the face value is subject to escheat.

Page 8, lines 6 through 21 - Adds to property not considered abandoned property: 1) gift certificates or electronic gift cards which do not expire in North Carolina, 2) prepaid calling cards issued by a telephone company, 3) a manufactured home buyer's deposit the manufactured home dealer is authorized to retain, and 4) certain credit balances between business associations.

Page 11, lines 13 through 15 - Requires a $10.00 fee when a holder makes a request for an extension for filing a report.

Page 17, line 12 - Adds as an additional provision to cause the 10-year statute of limitation on the Treasurer bringing an action against a holder to include situations where the holder filed a report with the Treasurer in which the holder "should have **but failed** to identify property,".

Page 18, line 4, - Deletes the "willful failure to file a report" from the offenses for which the cost of the cost of the examination finding the failure to report can be assessed by the Treasurer against the holder.

Page 18, lines 26 through 33 - Adds a new section G.S. 116B-73.1 to allow a holder to ask the Treasurer to conduct a precompliance review. A fee of $500 per day may be charged by the Treasurer for conducting this review.

Page 20, lines 40 through page 21, line 2 - Adds a new subsection (f) to G.S. 116B-77 to require a person who enters into an agreement to assist another in locating abandoned or unclaimed property to register with the Treasurer. The registration fee is set at $100.

Page 25, lines 39 through 41 - Language was added to the effective date clause to provide that the act applies to property existing on or after January 1, 2000, and that the changes to G.S. 116-54(d) (page 8, lines 15 through 17), clarify but do not change existing law.

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: April 26, 1999

RE: Senate Bill 244 (Unclaimed Property Act)

General Comments

Senate Bill 244 amends Chapter 116B of the General Statutes (Escheats and Abandoned Property) by repealing Article 2 (Abandoned Property), repealing Article 3 (Administration of Abandoned Property) except for certain sections that are recodified within Article 1 (Escheats), and adding a new Article 4 (North Carolina Unclaimed Property Act). The new Article 4 is based on the Uniform Unclaimed Property Act (1995), promulgated by the National Conference of Commissioners on Uniform State Laws to update, modernize, and substantially improve the law governing abandoned property. The Article, however, varies in several respects from the Uniform Act.

Senate Bill 244, among other things, sets forth in a single section the various periods after which property is presumed abandoned and the owner activity that may rebut the presumption of abandonment. It closely follows the language of the United States Supreme Court opinion in *Texas v. New Jersey*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), in describing the general rules under which a state may take custody of abandoned property. The bill changes some of the holding periods established under the current law and includes some specific kinds of property not expressly addressed under the current law. Shorter holding periods increase the likelihood of locating the missing property owner. Like the current law, the owner, at any time, may make a claim to the State for restitution of property delivered into the State's custody. Please note that the property is and remains the property of the owner. The bill also makes conforming amendments to other sections of the General Statutes.

Specific Comments

Section 1. This section amends G.S. 116B-4 to cross refer to the appropriate provisions of the new Article 4 for filing claims with the Treasurer. The section also deletes language that is no longer necessary because the subject matter is covered in the new Article 4.

Section 2. This section repeals Article 2 of Chapter 116B (Abandoned Property) because the subject matter is covered in the new Article 4.

Section 3. This section repeals Article 3 of Chapter 116B (Administration of Abandoned Property) except for the following sections of Article 3 that are recodified within Article 1 of Chapter 116B: G.S. 116B-27 (Escheat Fund), 116B-36 (Administration of Escheat Fund; Escheat Account), G.S. 116B-37 (Distribution of income of fund), and G.S. 116B-47 (Employment of persons with specialized skills or knowledge).

Section 4. This section amends G.S. 116B-6, as recodified by Section 3 of the bill, to update language and internal statutory references and to make the statute gender neutral.

Section 5. This section amends G.S. 116B-8, as recodified by Section 3 of the bill, to make the statute gender neutral and to update language.

Section 6. This section amends Chapter 116B of the General Statutes by adding a new Article 4, entitled "North Carolina Unclaimed Property Act" and consisting of §§ 116B-51 through 116B-79.

§ 116B-51. This section provides that the Article may be cited as the "North Carolina Unclaimed Property Act".

§ 116B-52. This section defines key terms used in the Article, including the following new terms: (1) "apparent owner"; (2) "domicile"; (3) "mineral"; (4) "mineral proceeds"; (5) "property"; (6) "record"; and (7) "state".

§ 116B-53. This section combines all dormancy periods for categories of property in one section, whereas current law sets out in separate sections the dormancy periods for each category of property. The section also reduces some of the dormancy periods under current law and includes some specific categories of property not specifically addressed under current law (e.g. IRA's and unmatured debt).

Subsection (a) specifies when property is "unclaimed" for purposes of the applicable dormancy periods set forth in subsection (c). The presumption that the property is abandoned can be rebutted by contact between the apparent owner and the holder by means of a written communication from the owner to the holder, or by some other means memorialized in the records of the holder, or by other means whereby the owner indicates an interest in the

property.

Subsection (b) sets forth a nonexclusive list of actions an owner can take to indicate interest in property. These actions include presentment of a check, making deposits and withdrawals from the account in which the property is held, paying a premium, or negotiating an instrument.

Subsection (c) provides that, on the expiration of the dormancy periods specified in subdivisions (1) through (16) of the subsection, unclaimed property is presumed abandoned.

Subsection (d) provides that when the underlying interest, e.g. stock, is presumed abandoned, all other property accruing to the owner as a result of that interest, e.g. dividends, is then also presumed abandoned. Subsection (d) eliminates the situation where underlying stock is presumed abandoned and delivered to the Treasurer but dividends issued on the stock within the last five years must be held by the holder because the dormancy period as to the dividends has not yet expired.

Subsection (e) provides that property is deemed payable or distributable even though the owner has not made a demand or presented an instrument or document that is required to obtain payment.

§ 116B-54. This section brings forward current law on forfeited reservation deposits held by business associations.

§ 116B-55. This section brings forward current law on taking custody of the contents of safe deposit boxes or other safekeeping depositories held by banks and other financial organizations. The contents of safe deposit boxes are presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7. The contents are delivered to the Treasurer as provided by that statute. If the contents include property described in § 116B-53, the Treasurer is required to hold the property for the remainder of the applicable dormancy period set forth in that section before the property is deemed to be received for purpose of public sale under § 116B-65.

§ 116B-56. This section describes the general rules under which this State may take custody of abandoned property. These rules are dependent upon the presence or absence of the last known address of the apparent owner in the records of the holder. Apparent owner is defined in § 116B-52(1) to mean the person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder. Abandoned property is subject to custodial taking by the State regardless of whether the property is located in this or another state.

§ 116B-57. This section provides that dormancy charges imposed by holders for inactivity can not be levied against property held unless there is a valid and enforceable written

contract between the owner and the holder for assessing the charges. The amount of the charges must be reasonable.

§ 116B-58. This section clarifies the Treasurer's burden of proof in situations where the property being claimed by the Treasurer is an obligation arising from the issuance of a check or similar instrument by the holder and the obligation is disputed by the holder. Under this section, a record of the issuance of the instrument is prima facie evidence of an obligation. The Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite dormancy period. Affirmative defenses available to the holder for establishing that the holder had no obligation to the apparent owner include payment, satisfaction, discharge, and want of consideration.

§ 116B-59. This section requires a holder of property presumed abandoned to make a good faith effort to locate the apparent owner. If the value of the property is $50.00 or more, the holder must send written notice, by first-class mail, to the apparent owner not more than 120 days or less than 60 days before filing the report of abandoned property with the Treasurer. The section also brings forward current law specifying the contents of the notice.

§ 116B-60. This section requires the holder of property presumed abandoned to file a report with the Treasurer and specifies the contents of the report. The report must be filed before November 1 of each year and must cover the 12 months next preceding July 1 of that year, except that a report with respect to a life insurance company must be filed before May 1 of each year and must cover the calendar year next preceding. Before the date for filing the report, the holder may request an extension of time for filing the report, and the Treasurer may grant the extension for good cause. An affidavit stating that the holder has complied with § 116B-59 must be filed with the report. The section brings forward current law requiring a business association holding property presumed abandoned to certify the holding in its income tax return and requiring the Secretary of Revenue to furnish to the Escheat Fund the information appearing on the certification.

§ 116B-61. Subsection (a) requires the holder to pay or deliver the property described in the report upon filing the report. However, if the property is an automatic renewal deposit and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

Subsection (b) provides that with respect to securities and security entitlements that have been reported as abandoned property, the Treasurer is an "appropriate person" to make an indorsement, instruction, or entitlement order under Article 8 of Chapter 25 of the General Statutes. Accordingly, the Treasurer has the same rights under Article 8 as other persons who succeed by operation of law to securities or security entitlements, such as the executor or administrator of a decedent.

Where the holder is itself the issuer of a certificated security and does not have the original certificate to turn over to the Treasurer, subsection (c) allows the Treasurer to obtain a replacement certificate without giving an indemnity bond. G.S. 25-8-405 enables the owner of a certificated security to obtain a replacement of a lost, destroyed, or stolen certificate, provided that reasonable requirements are satisfied and a sufficient indemnity bond is supplied.

Subsection (d) indemnifies a person causing a replacement certificate to be issued to the Treasurer from any claims that the person acted wrongfully in so doing. This indemnification is desirable in that it eliminates any duty of the transferring authority to make an independent investigation into whether the listed owner of the security is in fact missing, or into other factors which might affect the Treasurer's right to obtain custody of the property.

§ 116B-62. This section brings forward current law requiring the Treasurer to prepare a list of apparent owners to be delivered to the clerks of superior court and to publish notice of the list.

§ 116B-63. Subsection (a) defines when property is paid or delivered to the Treasurer in "good faith". Subsection (b) relieves a holder of all liability for any property paid or delivered to the Treasurer in good faith. Subsection (c) requires the Treasurer to reimburse a holder who pays unclaimed money to the Treasurer and subsequently pays a person reasonably appearing to the holder to be entitled to the money. Subsection (d) allows a holder to reclaim property other than money upon filing proof that the apparent owner has claimed the property from the holder. Subsection (e) allows the Treasurer to accept a holder's affidavit as sufficient proof of the holder's right to recover money and property. Subsection (f) provides that if any person or another state makes a claim on a holder for property paid or delivery to the Treasurer, the Treasurer, upon written notice of the claim, is required to defend the holder and provide indemnification against any liability on the claim resulting from payment or delivery of the property in good faith to the Treasurer.

§ 116B-64. This section provides that if property other than money is delivered to the Treasurer, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends must be paid until the date on which the property is delivered to the Treasurer.

§ 116B-65. Subsection (a) requires the public sale of abandoned property, other than securities, within three years after receipt of the property. Subsection (b) governs the sale of securities. Subsection (c) provides that a purchaser takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them.

§ 116B-66. This section and § 116B-56 (rules for taking custody) are designed to carry out the priority scheme enunciated in *Texas v. New Jersey*. In general the state in which the owner had his or her last known address is entitled to claim abandoned property. Where there

is insufficient information to permit this assertion of custody, the state of the holder's domicile takes the property subject to a later claim by the owner's state.

A claim to recover property under this section shall be presented in a form prescribed by the Treasurer and the Treasurer shall decide the claim within 90 days after it is presented. The Treasurer shall also require a state. before recovering property under this section, to agree to indemnify the State of North Carolina and its officers and employees against any liability on a claim to the property.

§ 116B-67. This section allows the owner to make a claim to the State for restitution of property delivered into the State's custody.

§ 116B-68. This section provides that a person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after filing may commence an action to establish the claim in the Superior Court of Wake County.

§ 116B-69. Subsection (a) allows the Treasurer to decline to receive property which the Treasurer considers to have a value less than the expenses of notice and sale. Subsection (b) allows the holder, with the consent of the Treasurer, to report and deliver property before the property is presumed abandoned; however, the Treasurer must hold the property until the dormancy period runs before the property would be subject to other provisions of Chapter 116B. This authority will enable the Treasurer to take possession of property when the holder is terminating business but the property is not yet reportable.

§ 116B-70. Subsection (a) allows the Treasurer to destroy or otherwise dispose of property which has no substantial commercial value. The subsection provides immunity from liability, except for intentional misconduct. Subsection (b) brings forward current law in expressly providing for the retention of property having historic significance.

§ 116B-71. Subsection (a) brings forward current law (G.S. 116B-34), providing that the expiration of a period of limitation on a claim by an owner does not relieve a holder of the duties imposed by this Article.

Subsection (b), which has no counterpart in current law, prohibits the Treasurer from commencing an enforcement action more than ten years after the holder filed a report in which the holder specifically identified or should have identified property or gave express notice of a dispute regarding property. The period of limitation is tolled if the report is not filed, the notice of dispute is not given, or the report is fraudulent.

§ 116B-72. This section is designed to facilitate compliance with Chapter 116B. Subsection (a) authorizes the Treasurer to require a person who has not filed a report or who has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the Treasurer. Subsection (b) authorizes the Treasurer to examine or to contract with any

other person to examine the records of any person to determine whether the person has complied with Chapter 116B. Subsection (c) authorizes the Treasurer to examine the records of an agent of a business association, e.g. a dividend disbursing agent or transfer agent, that is the holder of property presumed abandoned. Subsection (d) provides for the confidentiality of documents and working papers obtained or compiled in the course of an examination and lists the circumstances under which the documents and papers may be disclosed. If an examination results in the disclosure of reportable property, subsection (e) authorizes the Treasurer to assess against a holder who willfully failed to report or who made a fraudulent report the cost of the examination at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. Subsection (f) permits the use of estimates in instances where the holder has failed to report and deliver property and no longer has reasonably accessible records sufficient to prepare a specific report.

§ 116B-73. Except as provided in subsection (b), subsection (a) requires a holder to maintain records containing the information required to be included in a report for 10 years after the holder filed the report, unless a shorter period is provided by rule of the Treasurer. Subsection (b) requires the issuer of travelers checks and money orders to maintain records of the instruments for three years after the holder filed the report.

§ 116B-74. Subsection (a) authorizes the Treasurer to commence an enforcement action in this or another state. Subsection (b) brings forward current law allowing the Treasurer to order persons required to report, pay, or deliver property to appear before the Treasurer and to produce records and give testimony.

§ 116B-75. This section deals with interstate cooperation and joint actions. Subsection (a) allows an exchange of information relating to abandoned property or its possible existence. Subsection (b) explicitly permits the Treasurer to join with another state to seek enforcement of Chapter 116B. Subsection (c) explicitly permits the Attorney General of this State to commence an enforcement action on behalf of another state if the state agrees to pay the expenses incurred by the Attorney General. Subsection (d) explicitly permits the Treasurer to request that the attorney general of another state or another attorney commence an enforcement action in the other state on behalf of the Treasurer and also allows the Treasurer, with the approval of the Attorney General of this State, to retain an outside attorney to commence an enforcement action in this State on behalf of the Treasurer. The Treasurer may agree to base the attorneys' fees upon a percentage of the value of the property recovered for the State. Subsection (e) continues the authorization of the Treasurer to make expenditures from the Escheat Fund as may be necessary to effectuate this section.

§ 116B-76. This section requires a holder who fails to report, pay, or deliver property to pay interest on the property or value of the property from the date the property should have been reported, paid, or delivered. The section also provides civil penalties for willful failure to report, pay, or deliver property and for making a fraudulent report. These penalties are

different from the penalties under current law. The Treasurer is expressly authorized to waive, in whole or in part, interest and penalties; however, this authorization does not include the penalty for fraudulent reporting.

§ 116B-77. This section governs agreements between owners and "unclaimed property locators" or "heir finders" to locate abandoned property and is intended to enhance the likelihood that the owner of the property will be located by the efforts of the Treasurer and will receive a return of the property without payment of a "finder's fee." Subsection (a) voids any unclaimed property locator's or heir finder's agreement with the apparent owner if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. Subsection (b) requires that the agreement be in writing, identify the property, state its value before and after deduction of the fee, and specify the services to be rendered. Subsection (c) voids a provision of an agreement that provides for compensation that includes a portion of the underlying minerals or the mineral proceeds not yet presumed abandoned. Subsection (d) limits the locator's compensation to an amount that is not greater than 25% of the actual value of the property recovered. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may bring an action to reduce the compensation. The court may award attorneys' fees to an owner who prevails in the action. Subsections (b) and (d) apply to all agreements, regardless of when the agreement was made, including agreements with an owner as a result of a holder providing to private parties the holder's information regarding an inactive account. Finally, subsection (e) provides that an owner is not precluded from asserting that an agreement is invalid on grounds other than as provided in subsection (d).

§ 116B-78. This section sets forth transitional provisions.

§ 116B-79. This section authorizes the Treasurer to adopt rules necessary to carry out Chapter 116B.

Sections 7 through 12. These sections make conforming amendments to G.S. 44A-4(b)(1), 29-12, 53-43.7(b), 53-43.7(d), 53B-4, and 116-209.3. The amendments update statutory cross references, delete language believed to be no longer necessary, and make provisions gender neutral.

Section 13. This section is a general severability clause.

Section 14. This section authorizes the printing of drafters' comments.

Section 15. This section provides a delayed effective date of January 1, 2000.

North Carolina General Assembly

S.B. 244: LEGAL DOMICILE ISSUE

BACKGROUND: Under current North Carolina law, only one of two states can take custody of unclaimed property: either (1) the state of the last known address of the owner, or, if unknown, (2) the state of legal domicile of the holder. The law reflects United States Supreme Court decisions creating these two exclusive rights to claim property in order to create certainty in the law and avoid competing state claims.

ISSUE: § 116B-56(a)(6) of S.B. 244 creates a third right, allowing a state to take custody of property if other states do not, and the "transaction" occurred there.

DISCUSSION: In resolving claims among competing states, the United States Supreme Court adopted only two rules of priority because due process, administrative clarity, and the need for uniformity on a multistate basis compel the need for certainty. No state (or business, either) should be required to comply with the administrative requirements of multiple tiers of conflicting state claims. The Court rejected the "transactional" test as creating the very uncertainty and incentive to litigation that it hoped to avoid--a debate over what the transaction is, and where it occurred, on a case-by-case basis. As a policy matter, the General Assembly should apply the same standards where the dispute is between the state and a holder of property as the Supreme Court applies when the dispute is between one state and another, to minimize burdensome administrative costs.

CITATIONS: Texas v. New Jersey, 379 U.S. 674 (1965); Pennsylvania v. New York, 407 U.S. 206 (1972); Delaware v. New York, 507 U.S. 490 (1993).

REMEDY: Delete § § 116B-56(a)(6) of S.B. 244, which has no impact on the remainder of the statute.

Thank you for your assistance.

Allyson K. Duncan
James P. Cain
Kilpatrick Stockton LLP
for Sara Lee Corporation
(919) 420-1809

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News

Sara Lee

Intimate Apparel

FOR IMMEDIATE RELEASE

Contact: Peggy Carter, 336/519-7563

SARA LEE INTIMATE APPAREL TO BUILD NEW DISTRIBUTION CENTER FOR ITS BALI COMPANY

WINSTON-SALEM, N.C. (May 11, 1999) – Sara Lee Intimate Apparel has announced plans to build a 370,000 square-foot packaging and distribution center for its Bali Company in the Cleveland County Industrial Park in Kings Mountain, N.C. The new facility will consolidate the operations of two packaging and distribution centers now located in neighboring Gaston County.

"Strong business growth has resulted in the need for a larger and more modern facility," said Charles A. Nesbit, chief executive officer of Sara Lee Intimate Apparel. "The new distribution center will meet Bali Company's aggressive business growth projections for several years into the future."

Nesbit said that location was as important as capacity to the company. "As we looked at various options, we knew that we wanted the new center close to our existing facilities so that we could retain our experienced employees and stage an orderly transition between buildings. Our decision to build in Cleveland County confirms Bali Company's commitment to maintaining a strong base of operations in North Carolina and to its employees."

Bali employs 700 associates in the present facilities, and does not expect any disruption in the present workforce. The company will continue to operate its 220,000 square-foot facility on Canterbury Road in Kings Mountain.

-more-

to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

DELETE

(7)/6 The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the sa ; shown on the recor itled to the insurance reflect the

Corporate expansion of headquarters will be encouraged by deleting (6) above and this is suggested by Court cases as proper escheat law

Sam Johnson

"§ 116B-

A hol

imposed ble charge

time only a specified

the owne holder and

imposes t r regularly

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and

Construction on the new building will begin within two weeks and will be completed in December 1999. The Cleveland County Industrial Park was selected for the new building because it best met several business requirements. The site met company criteria for adequate property in close proximity to the current facilities, thereby minimizing disruption for Bali's experienced associates. In addition, the county-owned industrial park provides excellent access to shipping avenues and close proximity to Charlotte's Douglas International Airport.

The industrial park is located at the Waco exit of the Highway 74 Bypass in Kings Mountain.

Sara Lee Intimate Apparel is a leading manufacturer and marketer of women's intimate apparel products through its Bali and Playtex companies.

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Committee On State Taxation
122 C Street, N.W.
Suite 330
Washington, D.C. 20001
Telefax: (202) 484-5229

Douglas L. Lindholm, Esq.
President and Executive Director

Direct Line: (202) 484-5212

Testimony of Douglas L. Lindholm
President and Executive Director, Committee On State Taxation
before the North Carolina Senate Judiciary Committee
May 25, 1999

Introduction

Thank you and good afternoon. Let me begin by thanking the Committee for the opportunity to testify in support of the Committee Substitute for SB 244. My name is Doug Lindholm -- I am the President and Executive Director of the Committee On State Taxation (COST) in Washington, DC. COST is a non-profit organization originally formed in 1969 as an advisory committee to the national Council of State Chambers of Commerce to deal with state tax issues facing business organizations that operate in more than one state.

Our association, which was separately incorporated in 1992, currently has a membership of over 500 major multistate corporations engaged in interstate and international commerce. The vast majority of COST members conduct business in North Carolina -- contributing to its commerce, employing its citizens, and paying a significant portion of the State's taxes collected from multistate corporations. As good corporate citizens, these corporations have long sought to ensure that a level playing field exists between the business community and state government agencies. Our mission is to preserve and protect equitable and nondiscriminatory state taxation of multijurisdictional entities.

Although the subject matter of the issue before you today — unclaimed property — is clearly not a tax, certain issues arising out of the administration of state unclaimed property statutes in North Carolina are generating significant concerns among COST member companies. These include recent increases in the use of contingent fee auditing firms and statistical sampling to conduct audits of unclaimed property law compliance, coupled with an unlimited statute of limitations that places an unrealistic and overly burdensome recordkeeping requirement on companies doing business in North Carolina. The Committee Substitute for SB 244, particularly the exclusion for credit balances between business entities, goes a long way towards addressing those concerns in North Carolina.

Business to Business Credit Balances

Including credit balances resulting from transactions between business associations within the definition of unclaimed property runs contrary to the notion that businesses do not abandon property in the ordinary course of business. Such credit balances are frequently not property due a creditor, do not require the "protection" of the State, and are so common in commercial transactions that requiring such items to be turned over to the State unnecessarily increases the cost of doing business in North Carolina. Because businesses have the incentive, opportunity and wherewithal to collect what is owed them, legitimate credit balances between businesses are inherently reconcilable. Unlike most individuals, businesses have standardized accounting systems to track accounts, and hire bookkeepers, accountants and attorneys to monitor their finances. Accordingly, if a business does not pursue a credit balance on

another businesses' books, it is likely that the credit discrepancy was already paid or resolved, or never existed in the first place. Errors such as recording duplicate or incorrect amounts, calculating improper exchange rates, or posting amounts to incorrect accounts often lead to unresolved credit balances. In addition, many credit balances are only promised discounts premised upon future purchases, which remain uncollected if such purchases are never made.

For these reasons, credit balances between businesses are appropriately excluded from the definition of unclaimed property in CS/SB 244. Such a rule thereby places the recordkeeping burden on the appropriate party in the business transaction — the party with the financial incentive to collect legitimate outstanding amounts. The cost to a business that enters into millions of transactions yearly to trace such items and prove that the items are not abandoned property far exceeds the benefits to society from turning over the relatively few accounts that actually are legitimately owed and unclaimed.

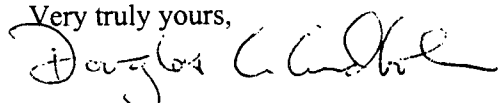
Statutes of Limitations

CS/SB 244 also appropriately provides for a statute of limitations on the liability of holders who have filed a report (except in cases of fraud). As long as a holder files a report in good faith, that holder can be assured that at some point in the future it will no longer be subject to audit and resulting penalties and interest on property either inadvertently excluded from the report or honestly interpreted as not included in the law. Absent such a statute of limitations, the penalties and interest in such a situation may be both significant and uncertain. As a result, business planning becomes more difficult, risks must be reserved for, and the costs of doing business increase for North Carolina companies. An appropriate statute of limitations allows a holder to conduct its business knowing there is finality to its recordkeeping burden, while administrators are granted ample time to audit a holder's books and records, and assess additional property if appropriate.

Conclusion

The issues cursorily outlined above are not specific to North Carolina. Similar issues with respect to unclaimed property are or have been the subject of legislation in the majority of states. Contrary to assertions Approval of the changes outlined in CS/SB 244 will not place North Carolina at a disadvantage with respect to collection of unclaimed property — several states, including Maryland, Arkansas, and Kansas, have already approved legislation exempting credit balances between business entities from the definition of unclaimed property, and several others (*e.g.*, Massachusetts, Illinois, Wisconsin) have similar legislation pending. Still other states that are contemplating adoption of the 1995 Model Act have referred the issue to legislative study commissions to hear and consider concerns similar to those addressed in CS/SB 244. Approval of the legislation contained in CS/SB 244 would go a long way towards improving the State's business climate and enhancing the State's reputation as a fair and friendly place to conduct business. Accordingly, we respectfully request your approval and recommendation of CS/SB 244.

Very truly yours,



Douglas L. Lindholm

cc: COST Board of Directors
Diann L. Smith, Esq.

May 17, 1999

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Mueller Industries Inc.
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The Scott Fetzer Company
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SOFTBANK Ziff-Davis Inc.
Solo Cup Company
Solutia Inc.
Solvay Pharmaceuticals, Inc.
Sonoco Products
Sony Corporation of America

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Tricon Global Restaurants, Inc.
TRW Inc.
TTX Company
Tupperware Corporation
Turner Broadcasting System, Inc.
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Yellow Corporation
York International Corporation
Zeneca Inc.

SB 244

UNCLAIMED PROPERTY ACT
SPONSOR: SENATOR FLETCHER HARTSELL

Background

When a consumer goes into a store to purchase a gift certificate or a gift card, he often does not know information on the intended recipient. Many times a consumer will buy several gift certificates and gift cards as presents or prizes and, because he does not know at the time of purchase who the recipient will be, he cannot provide the store with any recipient information. Most gift certificates and all gift cards are tracked by an issue number or code, not by name or address.

Problem

Under current law, after two years the retailer must pay State and federal corporate income tax of up to 40% on the face value of the gift certificate. Also, currently, under the Escheats and Abandoned Property provision, the retailer must remit to the State Treasurer, 100% of the face value of unredeemed gift certificates after 5 years. Therefore, the retailer can pay, in combination, to state and federal governments, as much as 140% of revenues received.

Once the gift certificate has escheated, the Treasurer is to hold those monies until the true owner comes to claim his property. It is impossible for either the retailer or the Treasurer to locate the gift certificate or gift card owner because no information was provided at the time of purchase as to who the final owner of the property would be. The purchaser of the gift certificate or gift card is not the true owner. The true owner is the person who received the gift certificate.

Solution

Sixteen states currently exempt most or all gift certificates and gift cards from the escheat process. Under this proposed legislation, as long as a gift certificate or gift card does not include an expiration date, it would not be subject to the escheat process. This would make gift certificates and gift cards simple to use and more consumer friendly because they will be increasingly similar to cash, as they are always acceptable for redemption. No longer will a consumer need to throw a gift certificate in to the trash because it has expired.

Pass SB 244

Attached are two forms from the North Carolina Department of State Treasurer. The first form (blue sheet) makes clear how inappropriate it is to consider gift certificates as part of the escheat process, as we have never known the name and address of the gift certificate recipient. The second form (yellow sheet) shows that it is impossible for retailers to report monies with any hope of consumer benefit, as we have never known the names and addresses of gift certificate recipients. Therefore, we cannot fill out any part of lines 1 through 9 on this form.

Fran Preston, President • Andrew Ellen, General Counsel • Ann Case, Lobbyist • 919.832.0811

What Neither Retailers Nor Consumers Know about the Escheat Process

Few, if any retailers are escheating gift certificates. Even a large corporate retailer who researches North Carolina statutes would not be aware that gift certificates escheat. The statutes are silent on this issue and fails to reference authority under a 1987 attorney general's opinion.

§ 116B-21. Property held in the ordinary course of business.

(a) Property. — All property, not otherwise covered in this Chapter, held in the ordinary course of the holder's business, including accounts payable and other obligations of any type, shall be presumed abandoned if it has not been claimed within five years after becoming payable or distributable. Any holder who has property in this category with a value of one hundred dollars ($100.00) or less in a single reporting year, shall not be required to report the property in that year, but shall report the property in any year when the value or aggregate value exceeds one hundred dollars ($100.00).

(b) Income and Charges. — Any income or increment due on property deemed abandoned under subsection (a) shall also be presumed abandoned and shall not be discontinued or diverted during the period prior to abandonment. Lawful charges may be deducted from property that is presumed to be abandoned, provided the lawful charges are specifically authorized by statute or by a valid enforceable contract. (1979, 2nd Sess., c. 1311, s. 1; 1983, c. 204, s. 2.)

OPINIONS OF ATTORNEY GENERAL

All Unclaimed Property Held by Various Types of Hospitals Escheats Pursuant to Statute. — See opinion of Attorney General to Mr. Edward E. Hollowell, 42 N.C.A.G. 14 (1972), decided under former Chapter 116A.

Under Facts Stated in Opinion, Statute Was Applicable to One-Product Cooperative Marketing Association. — See opinion of Attorney General to Honorable Edwin Gill, State Treasurer, 42 N.C.A.G. 12 (1972).

Under current law, if a consumer happened to know that an expired gift certificate would escheat to the state five years after the date of issuance, the consumer can (as shown on the Treasurer's website) complete a form (not currently available on-line) and claim his expired gift certificate. We know of no consumer who has completed this type of transaction.

To receive a claim form through normal mail and instructions on how to receive property rightfully owned by you, send inquiries to:

NC Department of State Treasurer
Escheat and Unclaimed Property Program
325 North Salisbury Street
Raleigh, NC 27603-1385
(919) 508-5979

Please indicate the name and address the property is listed under, even if your name and address have changed or if you are the beneficiary of a decedant listed as having property held on your behalf by the State of North Carolina. Also indicate where and when you saw or heard about this listing (the internet, a newspaper article, a radio announcement, etc.)

ASD-159
(Revised 6/16/98)

DEPARTMENT OF STATE TREASURER
ESCHEAT AND UNCLAIMED PROPERTY SECTION

REPORT OF UNCLAIMED PROPERTY VERIFICATION AND CHECKLIST

Verification for Report Year Ended
June 30, _____ December 1, _____ *(for insurers only)*

[redacted]der _____
(Name of Holder)

_____
(Mailing Address)

_____ _____ _____
(City) (State) (Zip Code)

Telephone# (____) _____ FIN# _____

State of Incorporation _____ Date of Incorporation _____

Please indicate the primary business of holder _____

List the names and last known addresses of all previous holders of the property if you are a successor. If you have changed your name during the time period in which you have held the property, list the prior name(s).

Previous Holder _____

If your report includes property held by subsidiary companies, list the name(s) of those companies.

_____

_____

Report type:

_____☐ Annual _____☐ Supplemental (Additional report)

_____☐ Audit (Audited by N.C. Auditors) _____☐ Compliance (Received correspondence from N.C.)

[redacted]☐ Negative _____☐ Initial (first report filed by this holder)

Every person, corporation, or other business association, banking or financial organization, insurance company, utility, court or public authority, etc. must complete the following checklist and this checklist should be filed with the Annual Report of Unclaimed Property (ASD-21) and/or Report of Unclaimed Securities (ASD-215). This checklist includes, but is not limited to those items which are covered by the North Carolina Escheat and Abandoned Property Law (G.S. 116B).

Please complete the checklist by checking "YES" or "NO" by each item. Each item marked "YES" must be enumerated on the Report of Unclaimed Property (ASD-21) and/or Report of Unclaimed Securities (ASD-215). Each item marked "NO" signifies that you do not have any unclaimed items in said category to be reported at all or the items do not meet the prescribed reporting dormancy period.

ACCOUNT BALANCES DUE

YES	NO	Class Code		Dormant Period
( )	( )	AC01	Checking Accounts	5
( )	( )	AC02	Savings Accounts	*
( )	( )	AC03	Matured CD or Sav Cert	10
( )	( )	AC04	Christmas Club Funds	5
( )	( )	AC05	Money on Dep to Secure Fund	5
( )	( )	AC06	Security Deposits	5
( )	( )	AC07	Unidentified Deposits	5
( )	( )	AC08	Suspense Accounts	5
( )	( )	AC09	Individual Retirement Accounts	*
( )	( )	AC99	Aggregate Account Balances Under $50	

MINERAL PROCEEDS & MINERAL INTERESTS

YES	NO	Class Code		Dormant Period
( )	( )	MI01	Net Revenue Interest	5
( )	( )	MI02	Royalties	5
( )	( )	MI03	Overriding Royalties	5
( )	( )	MI04	Production Payments	5
( )	( )	MI05	Working Interest	5
( )	( )	MI06	Bonuses	5
( )	( )	MI07	Delay Rentals	5
( )	( )	MI08	Shut-In Royalties	5
( )	( )	MI09	Minimum Royalties	5
( )	( )	MI99	Aggregate Mineral Interests Under $50	

UNCASHED CHECKS

([redacted])	( )	CK01	Cashier's Checks	10
( )	( )	CK02	Certified Checks	10
( )	( )	CK03	Registered Checks	10
( )	( )	CK04	Treasurer's Checks	5
( )	( )	CK05	Drafts	5
( )	( )	CK06	Warrants	5
( )	( )	CK07	Money Orders	15
( )	( )	CK08	Traveler's Checks	15
( )	( )	CK09	Foreign Exchange Checks	5
( )	( )	CK10	Expense Checks	5
( )	( )	CK11	Pension Checks	5
( )	( )	CK12	Credit Checks or Memos	5
( )	( )	CK13	Vendor Checks	5
( )	( )	CK14	Checks Written Off to Income	5
( )	( )	CK15	Other Outstanding Official Checks	5
( )	( )	CK16	CD Interest Checks	5
([redacted])		CK99	Aggregate Uncashed Checks Under $50	

MISCELLANEOUS CHECKS & INTANGIBLE PERSONAL PROPERTY

( )	( )	MS01	Wages, Payroll, Salary	5
( )	( )	MS02	Commissions	5
( )	( )	MS03	Workers' Compensation Benefits	5
( )	( )	MS04	Payment for Goods & Services	5
( )	( )	MS05	Customer Overpayments	5
( )	( )	MS06	Unidentified Remittances	5
( )	( )	MS07	Unrefunded Overcharges	5
( )	( )	MS08	Accounts Payable	5
( )	( )	MS09	Credit Balances - Accts. Rec.	5
( )	( )	MS10	Discounts Due	5
( )	( )	MS11	Refunds Due	5
( )	( )	MS12	Unredeemed Gift Certificates	5
( )	( )	MS13	Unclaimed Loan Collateral	5
( )	( )	MS14	Pension & Profit Sharing Plans (IRA,KEOGH)	5
( )	( )	MS15	Dissolution or Liquidation	Immediate
( )	( )	MS16	Misc Outstanding Checks	5
( )	( )	MS17	Misc Intangible Prop	5
( )	( )	MS18	Suspense Liabilities	5
( )	( )	MS19	Layaway Deposits & Payments	5
( )	( )	MS20	Rents	5
( )	( )	MS99	Aggregate Misc Checks & Intangible Personal Property	5

* 5 years if $1,000 or less
10 years if greater than $1,000

SAFE DEPOSIT BOXES & SAFEKEEPING

YES	NO	Class Code		Dormant Period
( )	( )	SD01	* Safe Deposit Box Contents	2
( )	( )	SD02	* Other Safekeeping	5
( )	( )	SD03	* Other Tangible Property	5

COURT DEPOSITS

( )	( )	CT01	Escrow Funds	5
( )	( )	CT02	Condemnation Awards	5
( )	( )	CT03	Missing Heirs' Funds	5
( )	( )	CT04	Suspense Accounts	5
( )	( )	CT05	Other Court Deposits	5
( )	( )	CT06	Real Property Proceeds	Court Direction
( )	( )	CT07	Cash Bonds	5
( )	( )	CT08	Partial Payments	5
( )	( )	CT09	Judgements	5
( )	( )	CT10	Trust Funds	5
( )	( )	CT99	Aggregate Court Deposits Under $50	

INSURANCE

( )	( )	IN01	Individual Policy Benefits or Claim Payments	5
( )	( )	IN02	Group Policy Benefits or Claim Benefits	5
( )	( )	IN03	Proceeds Due Beneficiaries	5
( )	( )	IN04	Proceeds From Matured Policies, Endowments or Annuities	5
( )	( )	IN05	Premium Refunds	5
( )	( )	IN06	Unidentified Remittances	5
( )	( )	IN07	Other Amounts Due Under Policy Terns	5
( )	( )	IN08	Agent Credit Balances	5
( )	( )	IN99	Aggregate Insurance Property Under $50	

SECURITIES

( )	( )	SC01**	Dividends	5
( )	( )	SC02**	Interest (Bond Coupons)	5
( )	( )	SC03	Principal Payments	5
( )	( )	SC04**	Equity Payments	5
( )	( )	SC05**	Profits	5

SECURITIES (continued)

YES	NO	Class Code		Dormant Period
( )	( )	SC06	Funds Paid to Purchase Shared	[redacted]
( )	( )	SC07	Funds For Stocks & Bonds	
( )	( )	SC08	Shares of Stock (Returned by Post Office)	5
( )	( )	SC09	Cash for Fractional Shares	5
( )	( )	SC10	Unexchanged Stock & Fractional Shares of Successor Corp	2
( )	( )	SC11	Other Cert of Ownership	5
( )	( )	SC12**	Underlying Shares or Other Outstanding Certificates	5
( )	( )	SC13	Funds For Liquidation Redemption of Surrendered Stocks or Bonds	5
( )	( )	SC14	Debentures	5
( )	( )	SC15	US Govt Securities	5
( )	( )	SC16	Mutual Fund Shares	5
( )	( )	SC17	Warrants (Rights)	5
( )	( )	SC18	Matured Bond Principal	5
( )	( )	SC19	Dividend Reinvestment Plans	5
( )	( )	SC20	Credit Balances	5
( )	( )	SC99	Aggregate Security Related Cash Under $50	

TRUST, INVESTMENT AND ESCROW ACCOUNTS

( )	( )	TR01**	Paying Agent Accounts	5
( )	( )	TR02**	Undelivered or Uncashed Dividends	5
( )	( )	TR03	Funds Held in Fiduciary Capacity	5
( )	( )	TR04	Escrow Accounts	5
( )	( )	TR05	Trust Vouchers	5
( )	( )	TR99	Aggregate Trust Property Under $5	[redacted]

UTILITIES

( )	( )	UT01	Utility Deposits	5
( )	( )	UT02	Membership Fees	5
( )	( )	UT03	Refunds or Rebates	5
( )	( )	UT04	Capital Credit Distributions	5
( )	( )	UT99	Aggregate Utility Property Under $50	

MISCELLANEOUS

( )	( )	ZZZZ	Properties Not Identified Above	5

* This property should be submitted on Form ASD-127.

** Specify Date Range (i.e. the date of the first and last payments) on "Periodic Payments" (i.e. outstanding dividend checks) if multiple payments of same property type are being reported for a single property owner.

*** All Certificates, upon escheatment, are required to be issued in the name of Greensboro & Co., with Tax ID# 04-3194013 (Exempt status). The certificates are due with the unclaimed property report and the remittance. Submit on Form ASD-215, Report of Unclaimed Securities.

NEGATIVE REPORTS

If you have no escheat or unclaimed property to report check here. ☐

Did you file a report of unclaimed property last year? Yes ☐ No ☐

If no, please explain:_____

LATE FILING INTEREST PENALTY

In addition to any other penalties, any holder who files their Report of Unclaimed Property after March 1 (for insurers, November 1) will be charged interest at the rate of 12% per annum until the report is received. The interest penalty is computed as follo[redacted]

Total amount of property reportable X # of days late/365 X 12% = Interest Penalty

TOTAL REMITTANCE

Total Amount carried over from last page of report form (ASD-21) $_____

Applicable interest penalty +_____

Total Remittance Due $

CERTIFICATION AND VERIFICATION

As the person authorized to bind _____ (Name of Holder), I certify that the attached report is correct and that all property eligible to be remitted is included in this return, and the property reported has been held for the period required by Article 2 of G.S. 116B. Further, I certify that notices pursuant to G.S. 116B-28(a) for insurers and G.S. 116B-28(b) for other holders were sent to the owners at their last known address, and that I am fully aware of the provisions of G.S. 116B-28(e).

_____ Name (Please Print) _____ Title _____ Date

Signature _____[redacted]

MAIL ASD-21, ASD-159 AND REMITTANCE IF APPLICABLE TO:

North Carolina Department of State Treasurer
Escheat and Unclaimed Property Section
325 North Salisbury Street
Raleigh, North Carolina 27603-1385 Phone: (919) 508-5979

ASD-21
(Revised 6/8/94)

North Carolina Department of State Treasurer

REPORT OF UNCLAIMED PROPERTY

- For all holders except insurers, report and remittance due on or before March 1, following June 30 of the year property became reportable.
- For Insurers - Report and remittance due on or before November 1, following December 31 of the year property became reportable.

(Please print, type or use label on back)

Name of Holder
Mailing Address (Number and Street or P.O. Box)
City, State, ZipCode

PLEASE COMPLETE	
For Period Ending: June 30, 19	
(for insurers only) December 31, 19	Page of
Federal ID#:	Location #:
Telephone #: ( )	
Nature of business or product:	

DO NOT WRITE IN THIS SPACE
(Office use only)

Please read all instructions on reverse side before completing this form. Refer to NOTICE on reverse side for all amounts less than $50.00.

(1) OWNER(S) NAME(S) (Last)	(First)	(M.I.)	(2) OWNER(S) ADDRESS(ES) (Street, City, State, Zip)	(3) Owner(s) Social Security Number(s)	(4) Owner(s) Identifier Number(s)	(5) Property Class Code	(6) Date of Last Transaction or Date Property Became Payable, Redeemable or returnable	(7) Amount Due Owner(s) Before Statutory Reductions	(8) Statutory Reductions (See instructions) (8a) Type	(8b) Amount	(9) Net Amount Remitted

CERTIFICATION and VERIFICATION: As the person authorized to bind the holder named above, I certify that this report is correct and that all property eligible to be remitted is included in this return, the property reported has been held for the period required by Article 2 of G.S. 116B, that notices pursuant to G.S. 116B-28(a) and 116B-28(b) were sent to the owners at their last known address, and that I am fully aware of the provisions of G.S. 116B-28(e).

Total This Page	$
If this is the last page of report, enter total to be remitted and carry over to back side of ASD-159.	$

Name - Pr[redacted] Signature - Required [redacted] Title Date [redacted]

INSTRUCTIONS FOR COMPLETING THE ASD-21*
Please Print or Type

(1) Owner(s) Name(s) *(last name, first name, middle initial).*
(2) Last known address(es) of owner(s).
(3) Owner(s) Social Security Number(s) (if known).
(4) Owner(s) Identifier Number(s) (account number, check number, policy number, etc.).
(5) Property classification code - *The property classification and the period during which the property is in the custody of the holder are directly related. The Unclaimed Property Verification and Checklist (ASD-159) provides the property classification codes and the statutory custodial period of each type of property.*
(6) The "date of last transaction" is that of the last deposit or withdrawal made by the owner. The "date property became payable, redeemable, or returnable" is the date a dividend became payable, the date a check or draft was issued, the date a gift certificate was purchased, etc.
(7) Amount due owner(s) before Statutory Reductions.
(8) Statutory Reductions.

(8a) Type of Statutory Reductions.
SC - Service Charges
P - Maximum deduction of 50¢ per owner for postage only for mailing notices to owners' last known address
N - No deductions or withholdings
O - Other (attach explanation)
(8b) Amount of Statutory Reductions.

(9) (Line 7 less Line 8) Net amount remitted - *Amount remitted after Statutory Reductions.*

NOTICE: Next to the Federal I.D.# there is another block labeled Location #. This is the branch or store number for your business; if UNKNOWN or NONE enter ZERO.

The revised Form ASD-21 now allows for listing multiple aggregate amounts (any money under $50.00 may be "lumped together" and reported as aggregate without listing the owner's name and address). The aggregate amounts should be grouped by property code and listed in the "last" name field as "aggregate." Unknown owners should also be listed as aggregate. The only exception to listing in the aggregate pertains to earnings and capital gains (i.e., dividends) from securities and mutual funds. These accounts should be listed by owner name regardless of the amount of unclaimed money reported.

*** NOTE:** Certification must be signed for report to be acceptable. If there is no reportable property in your custody, please write "Negative" in column (1) on ASD-21, sign and date certification. In addition, complete the Report of Unclaimed Property Verification and Checklist (ASD-159) including the box which must be checked for Negative Reports, sign and mail both ASD-21 and ASD-159 to the North Carolina Department of State Treasurer.

If report is postmarked later than March 1 (or November 1 for insurers), an interest penalty will be assessed. This penalty, provided by 116B-41(c) amounts to 12% per annum of the total amount of reportable property and will be reflected in the receipt issued by this office. Holders may calculate their interest penalty on the verification and checklist form that accompanies this report. Securities and mutual fund values for penalties may be computed by holder at date of registration to North Carolina State Treasurer - Escheat Fund or it will be computed by this office based on the date received.

All unclaimed securities (stocks, bonds and mutual funds, whether in physical certificates or book entry) should be reported on Form ASD-215.

All tangible property (safe deposit contents or personal property) should be reported on Form ASD-127.

The Report of Unclaimed Property Verification and Checklist (ASD-159) must be filled out and attached in order for your annual Report of Unclaimed Property to be complete.

MAIL ASD-21, ASD-159 AND REMITTANCE IF APPLICABLE TO:

North Carolina Department of State Treasurer
Escheat and Unclaimed Property Section
325 North Salisbury Street
Raleigh, North Carolina 27603-1385
Tele: (919) 508-5979

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, May 26, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **244** Unclaimed Property Act/AB

Draft Number:	PCS 1746
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

(1)

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

5-25-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
NEIL HASTY	UNION EMC
Tom Slusher	Union EMC
Julia Griffin	Union EMC
Elaine Cunningham	Union EMC
Amy Fullbright	Hunton & Wms.
John McArthur	Conector Electric
Roy Stamey	Haywood Co NC
Brian Moser	Union EMC
Dalton Black	Union EMC
[illegible]	" "
Tony Herrin	Union EMC Monroe NC
Steve Simmia	NCPCA
Lark Mugby	
Richard Rhett	Piedmont Emc
Rachel Hawkins	Piedmont EMC
Vann Hilton	Union Emc

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Robert Maxwell	Union EMC
Brenda Dougherty	Sprint
Kevin Ryan	Community Colleges
Doris S Brown	EnergyUnited EMC
Sara W. Wallace	EnergyUnited EMC
Andy Lloyd	WCSR
Wayne Williams	EnergyUnited EMC
John Woodruff	Blue Ridge EMC
Mike Dennings	Dixie - Dennings L.P. Gas
Wayne McLamb	McLamb's LP Gas, Benson NC
Sam Johnson	ATTY
Jim Cain	Attorney
Tim Duncan	WCSR
Eugene Lehman	Arthur Andersen LLP
Jeff VAN Dyke	BellSouth

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Romaine Hart	NCPSA Raleigh
Becky Fowler	NCPGA / RJ WILLIAMSON, INC
Wayne Fussell	NCPGA / Smith Bros. Grad Co.
Ed Congleton	NCPGA \ Stokes + Congleton, Inc.
Roz Sawtt	NCCCA
Ann Case	NCAMA
David Simmons	ZDA, PA
Elizabeth McDuffie	NC State Education Assistance Authority
Julie Rice Mallette	NC State University
Steven E. Brooks	NCSEAA
Algie C. Gatewood	NCSEAA
Clifton B. Metcalf	NDC GA
Lee R. Irwin	NCDOT
Ron Brooks	Diamond Elect. Co.
Tom Woodruff	Energy United - Statesville
N. Mark Short	Energy United - Statesville

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Fardie Barkley	Halifax EMC PO Box 667 Enfield NC 27823
Pam Ballew	"
SANDY SANDS	WCSR
Luther Brown	Springer - Eubanks Co.
ED MYERS	Miller Gas Co. Inc
Don Worsley	Hunter Oil & Propane, Inc.
HD WILLARD	MAKO TRANSPORTATION
Ben Singleton	Stan Taylor Agency
Derek Allen	Brooks Law Firm
Suzanne Sims	NCCCS
Carolyn Hardison	NCEMC
Jeff Lundsford	NCPG
David Barnette	NC PG
Chad Smith	NCPGA
A. A. Smith, Jr.	NCPGA B+R GAS Co
W. F. Pickett	NCPGA Smith Bros. Gas
Bobby N. Smith	NCPGA Smith Bros. Gas Co.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
DOUG Johnson	Blue Ridge EMC Lenoir, NC
JIM MANGUM	WAKE EMC WAKE FOREST, NC.
BOB PHILLIPS	RANDOLPH EMC ASHEBORO, NC
Dale Lambert	Randolph EMC Asheboro, NC
Harold Terry	Randolph EMC Asheboro NC.
DAVE ROWE	RANDOLPH EMC Asheboro, NC
DOUG LINDHOLM	COMMITTEE ON STATE TAXATION 20001 122 C St. NW Ste 330 WASH DC
Dan Jones	Smith Anderson
Rosie Berger	WCCBT
Floyd M. Lewis	General Statutes Commission
John Poteat	AT&T
C. Hardy Heatherly	DOT
Terry Allen	State Treasurer
Fran Preston	NCRMA
Andy Ellen	NCRMA

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 1, 1999

The Senate Judiciary I Committee met on June 1, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Alexander to explain **House Bill 248 – AN ACT TO AMEND THE STATUTES CONCERNING PRECINCT BOUNDARIES.**

Senator Carpenter moved to adopt a Proposed Committee Substitute to House Bill 248 for discussion. The motion carried by a majority voice vote.

Senator Gulley moved to give the Proposed Committee Substitute to House Bill 248 a favorable report. The motion carried by a majority voice vote.

Representative Miller was recognized to explain **House Bill 1048 – AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY.**

Senator Rand moved to give House Bill 1048 a favorable report. The motion carried by a majority voice vote.

Senator Gulley was recognized to explain **Senate Bill 881 – AN ACT TO ESTABLISH THE CAMPAIGN REFORM ACT OF 1999.**

Senator Gulley moved to adopt a Proposed Committee Substitute to Senate Bill 881 for discussion. The motion carried by a majority voice vote.

Senator Soles moved to amend the Proposed Committee Substitute on Page 14, Line 19. The motion carried by a majority voice vote. (Amendment attached.)

Senator Wellons moved to give the Proposed Committee Substitute to Senate Bill 881 a favorable report and roll it into a new Committee Substitute and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, June 1, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 760	Campaign Finance Reform	Gulley
HB 248	Precinct Boundaries	Alexander/Bonner
HB 1048	Amend Rule 4/Manner of Service	Miller

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 1, 1999

SB 881	Campaign Finance Reform	Gulley
HB 248	Precinct Boundaries	Alexander/Bonner
HB 1048	Amend Rule 4/Manner of Service	Miller

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 248
Committee Substitute Favorable 3/31/99

Short Title: Precinct Boundaries. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES CONCERNING PRECINCT BOUNDARIES.

The General Assembly of North Carolina enacts:

Section 1. Article 12A of Chapter 163 of the General Statutes reads as rewritten:

"ARTICLE 12A.

"Precinct Boundaries.

"**§ 163-132.1. Participation in 2000 Census Redistricting Data Program of the United States Bureau of the Census.**

(a) Purpose. -- The State of North Carolina shall participate in the 2000 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases), so that the State will receive 2000 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Phase I (Block Boundary Suggestion Program). -- The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps

produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;

(2) Place those boundaries and features on maps deemed appropriate by the State Board;

(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and

(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.

(c) Phase II. -- The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:

(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall ~~send to the county boards of elections the Census Bureau's official block maps, on paper or electronically, to be used in the 2000 Census.~~ provide the county boards of elections with access, on paper or electronically, to the Census Bureau's maps for Phase II of the Census Redistricting Data Program.

(2) After receiving the maps, the county boards of elections shall designate their precinct lines along the ~~block boundary lines on the maps.~~ lines the Census Bureau indicates on the maps it will hold as block boundaries for the 2000 Census. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to lines the Census Bureau indicates it will hold as Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, shall file with the Legislative Services Office the maps ~~sent to them and marked by them~~ on which they have designated their precincts pursuant to this subsection.

(3) After examining the ~~returned~~ maps, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.

(4) If the Executive Secretary-Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.

(5) If the Executive Secretary-Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.

(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Secretary-Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Secretary-Director finds that:

a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;

b. The Combined Reporting Unit consists only of contiguous territory;

c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;

d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and

e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Secretary-Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to

the Executive Secretary-Director under subdivision (3) of this subsection.

(7) The Executive Secretary-Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts. -- Notwithstanding the provisions of G.S. 163-132.3, after the Executive Secretary-Director approves the precincts in accordance with subsection (c) of this section and before January 2, ~~2000,~~ 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey and ending January 2, ~~2000,~~ 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:

(1) Direct by resolution that the annexed area is automatically moved into the 'city precinct', provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.

(2) Adopt a resolution moving the precinct boundary to a visible feature that the Census Bureau has indicated it will use as a 2000 block boundary.

The county board of elections shall submit any proposed change made during the freeze under this subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Secretary-Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Secretary-Director shall approve the proposal. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director as being in compliance with the provisions of this subsection. ~~The county board of elections may delay the effective date of any change under this subsection to a date not later than January 1, 2002.~~

(e) Municipal and Township Boundaries. -- Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Secretary-Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.

(f) Additional Rules. -- In addition to the directives promulgated by the Executive Secretary-Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section.

~~"§ 163-132.1A. Precinct boundaries for certain counties.~~

~~(a) The boundaries of precincts for the counties listed in subsection (b) of this section are those recorded in the Legislative Services Office's automated redistricting system as of May 1, 1991, except as changed in accordance with G.S. 163-132.3, and except in Caldwell County, the boundaries of Lenoir #3, North Catawba, Gamewell #1, and Gamewell #2 Precincts shall be as provided on the precinct map of the county adopted by the Caldwell County Board of Elections and in effect on January 1, 1992, unless changed in accordance with G.S. 163-132.1 or G.S. 163-132.3, whichever occurs later.~~

~~(b) This section shall apply only to the following counties: Alamance, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Chowan, Cleveland, Craven, Cumberland, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Halifax, Harnett, Henderson, Iredell, Johnston, Jones, Lenoir, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pender, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Surry, Union, Wake, Washington, Wayne, Wilkes, Wilson, and Yancey.~~

~~"§ 163-132.2. Precinct boundaries for other counties.~~

~~(a) The Legislative Services Office shall send as directed by the schedule contained in subsection (g) of this section the relevant copies of the United States Census Bureau's official census block maps of the 1990 United States Census to each county board of elections. The county board of elections shall:~~

~~(1) Alter, where necessary, precinct boundaries to be coterminous with those of:~~

~~a. Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;~~

~~b. The census blocks established under the latest U.S. Census;~~

~~c. The following visible physical features, readily distinguishable upon the ground:~~

~~1. Roads or streets;~~

~~2. Water features or drainage features;~~

~~3. Ridgelines;~~

~~4. Ravines;~~

~~5. Jeep trails;~~

~~6. Rail features;~~

~~7. Above-ground power lines; or~~

~~8. Major footpaths~~

~~as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the~~

~~chair of the county board of commissioners, on official county maps.~~

~~d. Municipalities, as certified by the city clerk on the official map of the city; or~~

~~e. A combination of these boundaries;~~

~~(1a) Alter, where necessary, precinct boundaries so that each precinct is composed solely of contiguous territory;~~

~~(2) Mark all precinct boundaries on the maps sent by the Legislative Services Office or on other maps or electronic databases approved by the Executive Secretary-Director, showing the precinct boundaries in effect as of the time of marking, but with any changes effective at a later time as provided by subsection (d) of this section; and~~

~~(3) File, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, with the State Board and the Legislative Services Office the maps identifying the precinct boundaries. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof.~~

~~(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the returned maps and their written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that the county board of elections has complied with the provisions of subsection (a) of this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.~~

~~(c) If the Executive Secretary-Director of the State Board determines that the county board of elections has not complied with the provisions of subsection (a) of this section, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with those boundaries set forth in subsection (a)(1) of this section nearest to those existing precinct boundaries. These altered precincts shall then be the official precincts.~~

~~(d) The changes in precinct boundaries under subsections (b) and (c) of this section shall be made effective not later than January 1, 1997; unless the change would result in placing a precinct in more than one State House of Representatives, State Senate, or Congressional district, in which case it shall be made effective not later than January 1, 2002.~~

~~(e), (f) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 1.~~

~~(g) The Legislative Services Office shall send maps, under subsection (a) of this section, to the counties named below by the dates indicated:~~

~~(1) Maps to be sent not later than January 1, 1993, to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Currituck, Cherokee, Clay, Franklin, Gates, and Hoke;~~

~~(2) Maps to be sent not later than January 1, 1994, to the following counties: Columbus, Dare, Davie, Graham, Greene, Haywood, Hertford, Hyde, Jackson, Lee, Lincoln, Madison, Martin, Mitchell, Montgomery, Northampton, and Pasquotank; and~~

~~(3) Maps to be sent not later than January 1, 1995, to the following counties: Macon, McDowell, Moore, Pamlico, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.~~

~~(h) This section shall apply only to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Cherokee, Clay, Columbus, Currituck, Dare, Davie, Franklin, Gates, Graham, Greene, Haywood, Hertford, Hoke, Hyde, Jackson, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.~~

~~(i) Any county board of elections whose precincts were not approved by the Executive Secretary-Director under the provisions of this section during the year by which maps were to be sent to the county under subsection (g) of this section shall submit precinct boundary changes that comply with subsection (a) of this section to the Legislative Services Office before January 1, 1996, according to directives promulgated by the Executive Secretary-Director.~~

"§ 163-132.3. Alterations to approved precinct boundaries.

(a) No county board of elections ~~of a county listed in G.S. 163-132.1A(b), after January 1, 1990, and no county board of elections of a county listed in G.S. 163-132.2(h), after its precinct boundaries are approved pursuant to G.S. 163-132.2,~~ may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of:

(1) Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;

(2) The census blocks established under the latest U.S. Census or the boundaries contained on the latest preliminary U.S. Census maps, issued under P.L. 94-171, whichever occurs later;

(3) The following visible physical features, readily distinguishable upon the ground:

a. Roads or streets;

b. Water features or drainage features;

~~e. Ridgelines;~~

~~d. Ravines;~~
~~e. Jeep trails;~~
f. Rail features; or
g. ~~Above-ground power lines; or~~ Major above-ground power lines
~~h. Major footpaths~~

as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps.

(4) Municipalities, as certified by the city clerk on the official map of the city; or

(5) A combination of these boundaries.

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Secretary-Director the new boundaries of these precincts. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director of the State Board as being in compliance with this subsection. No precinct may be changed under this section between the date its boundaries become effective under G.S. 163-132.1(c) and January 2, 2002. Any changes to precincts during that period shall be made as provided in G.S. 163-132.1(d).

(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, he shall not approve those precinct boundaries. He shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

"§ 163-132.4. Directives.

The Executive Secretary-Director of the State Board of Elections may promulgate directives concerning its duties and those of the county boards of elections under this Article.

"§ 163-132.5. Cooperation of State and local agencies.

The State Budget Office, the Department of Transportation and county and municipal planning departments shall cooperate and assist the Legislative Services Office, the Executive Secretary-Director of the State Board of Elections and the county boards of elections in the implementation of this Article.

"§ 163-132.5A: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1.

"§ 163-132.5B. Exemption from Administrative Procedure Act.

The State Board of Elections is exempt from the provisions of Chapter 150B of the General Statutes while acting under the authority of this Article. Appeals from a final decision of the Executive Secretary-Director of the State Board of Elections under this Article shall be taken to the State Board of Elections within 30 days of that decision. The State Board shall approve, disapprove or modify the Executive Secretary's decision within 30 days of receipt of notice of appeal. Failure of the State Board to act within 30 days of receipt of notice of appeal shall constitute a final decision approving that of the Executive Secretary. Appeals from a final decision of the State Board under this Article shall be taken to the Superior Court of Wake County.

"§ 163-132.5C. Local acts and township lines.

(a) Notwithstanding the provisions of any local act, a county board of elections need not have the approval of any other county board or commission to make precinct boundary changes required by this Article.

(b) Precinct boundaries established, retained or changed under this Article, or changed to follow a district line where a precinct has been divided in a districting plan, may cross township lines.

"§ 163-132.5D. Retention of precinct maps.

The Executive Secretary-Director of the State Board of Elections shall retain the maps and written descriptions which he approves pursuant to G.S. 163-132.3.

~~**"§ 163-132.5E. Precinct maps and voter statistics filed with the Legislative Services Office.**~~

~~(a) No later than January 31 of each year, the chairman of each county board of elections shall file with the Legislative Services Office a map showing the county's precincts as of January 1 of that year.~~

~~(b) Not later than January 31 of each year, the chair of each county board of elections shall file with the Legislative Services Office a list of each precinct in the county as of January 1 of that year and the number of registered voters, in each precinct, by political party and race; and, no later than January 31 of each year beginning in 1996, with a numerical breakdown as to the race of registered voters of each political party.~~

~~(c) The Legislative Services Office shall develop and send by mail to each county board of elections by September 15 of each year a standard electronic data format that can be used in the following year by county boards of election as an alternative~~

~~method of filing the list required by subsection (b) of this section. The standard electronic data format shall be for data provided in international standard ASCII file format on 9-track magnetic tape, 8-millimeter magnetic tape, 5 1/4 inch diskettes, or 3 1/2 inch diskettes. The standard electronic data format shall contain the name of the precinct, and for each precinct the total number of registered voters, the number of registered voters by party affiliation, the number of registered voters by race, and a numerical breakdown as to the race of registered voters in each political party.~~

"§ 163-132.5F. U.S. Census data by precinct.

The State shall request the U.S. Census Bureau for each decennial census to provide summaries of census data by precinct and shall participate in any U.S. Bureau of the Census' program to effectuate this provision.

"§ 163-132.6: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1."

Section 2. Notwithstanding the provisions of Sections 2 and 3 of Chapter 423 of the 1995 Session Laws, the version of G.S. 163-132.3 contained in Section 1 of this act is effective upon this act's becoming law and does not expire. To the extent it is inconsistent with the provisions of this act, Section 3 of Chapter 423 of the 1995 Session Laws is repealed.

Section 3. Notwithstanding the repeal of G.S. 163-132.1A and 163-132.2 contained in Section 1 of this act, the precincts established under the repealed provisions, as amended under G.S. 163-132.3, shall continue to be in effect until new precincts are established under G.S. 163-132.1.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 248
Committee Substitute Favorable 3/31/99
Proposed Senate Committee Substitute -- H248-PCSRR-002

Short Title: Precinct Boundaries. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES CONCERNING PRECINCT BOUNDARIES AND TO PROVIDE THE RULES AND PROCEDURE FOR MUNICIPAL REDISTRICTING IN 2001.

The General Assembly of North Carolina enacts:

Section 1. Article 12A of Chapter 163 of the General Statutes reads as rewritten:

"ARTICLE 12A.

"Precinct Boundaries.

"**§ 163-132.1. Participation in 2000 Census Redistricting Data Program of the United States Bureau of the Census.**

(a) Purpose. -- The State of North Carolina shall participate in the 2000 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases), so that the State will receive 2000 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Phase I (Block Boundary Suggestion Program). -- The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;

(2) Place those boundaries and features on maps deemed appropriate by the State Board;

(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and

(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.

(c) Phase II. -- The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:

(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall ~~send to the county boards of elections the Census Bureau's official block maps, on paper or electronically, to be used in the 2000 Census.~~ provide the county boards of elections with access, on paper or electronically, to the Census Bureau's maps for Phase II of the Census Redistricting Data Program.

(2) After receiving the maps, the county boards of elections shall designate their precinct lines

along the ~~block boundary lines on the maps.~~ lines the Census Bureau indicates on the maps it will hold as block boundaries for the 2000 Census. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to lines the Census Bureau indicates it will hold as Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, shall file with the Legislative Services Office the maps ~~sent to them and marked by them~~ on which they have designated their precincts pursuant to this subsection.

(3) After examining the ~~returned~~ maps, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.

(4) If the Executive Secretary-Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.

(5) If the Executive Secretary-Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.

(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Secretary-Director may combine for Census reporting purposes only two or more adjacent precincts of the

county into a Combined Reporting Unit, if the Executive Secretary-Director finds that:

a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;

b. The Combined Reporting Unit consists only of contiguous territory;

c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;

d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and

e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Secretary-Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Secretary-Director under subdivision (3) of this subsection.

(7) The Executive Secretary-Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts. -- Notwithstanding the provisions of G.S. 163-132.3, after the Executive Secretary-Director approves the precincts in accordance with subsection (c) of this section and before January 2, ~~2000,~~ 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division.

Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey and ending January 2, ~~2000,~~ 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:

(1) Direct by resolution that the annexed area is automatically moved into the 'city precinct', provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.

(2) Adopt a resolution moving the precinct boundary to a visible feature that the Census Bureau has indicated it will use as a 2000 block boundary.

The county board of elections shall submit any proposed change made during the freeze under this subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Secretary-Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Secretary-Director shall approve the proposal. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director as being in compliance with the provisions of this subsection. ~~The county board of elections may delay the effective date of any change under this subsection to a date not later than January 1, 2002.~~

(d1) Right to Postpone Effective Date Until January 1, 2000. -- A county board of elections may postpone the effective date of the precincts designated in Phase II until January 1, 2000.

(d2) Special Permission to Postpone Effective Date Until January 1, 2001. -- The Executive Secretary-Director may permit a county board of elections to postpone the effective date of precinct lines designated under Phase II until January 1, 2001, upon written application by the county board of elections, if the Executive Secretary-Director finds both of the following:

(1) That the Phase II-designated lines would create a split precinct in 2000 for county commissioner, board of education, judicial, state legislative, or

congressional district elections and that a split could be avoided by using the pre-Phase II precinct.

(2) That the county can provide reasonably reliable voter registration data for April and October of 2000 by the Phase II-designated precincts.

In granting an exception under this subsection, the Executive Secretary-Director shall allow an exception only for the precincts that would result in splits and for any adjacent precincts for which pre-Phase II precincts must be used to avoid geographic overlap or discontinuity. Every county board of elections granted an exception under this subsection shall provide to the State Board of Elections voter registration data for April and October of 2000 by the Phase II-designated precincts.

(e) Municipal and Township Boundaries. -- Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Secretary-Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.

(f) Additional Rules. -- In addition to the directives promulgated by the Executive Secretary-Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section.

~~"§ 163-132.1A. Precinct boundaries for certain counties.~~

~~(a) The boundaries of precincts for the counties listed in subsection (b) of this section are those recorded in the Legislative Services Office's automated redistricting system as of May 1, 1991, except as changed in accordance with G.S. 163-132.3, and except in Caldwell County, the boundaries of Lenoir #3, North Catawba, Gamewell #1, and Gamewell #2 Precincts shall be as provided on the precinct map of the county adopted by the Caldwell County Board of Elections and in effect on January 1, 1992, unless changed in accordance with G.S. 163-132.1 or G.S. 163-132.3, whichever occurs later.~~

~~(b) This section shall apply only to the following counties: Alamance, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Chowan, Cleveland, Craven, Cumberland, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Halifax, Harnett, Henderson, Iredell, Johnston, Jones, Lenoir, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pender, Pitt,~~

~~Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Surry, Union, Wake, Washington, Wayne, Wilkes, Wilson, and Yancey.~~

~~"§ 163-132.2. Precinct boundaries for other counties.~~

~~(a) The Legislative Services Office shall send as directed by the schedule contained in subsection (g) of this section the relevant copies of the United States Census Bureau's official census block maps of the 1990 United States Census to each county board of elections. The county board of elections shall:~~

~~(1) Alter, where necessary, precinct boundaries to be coterminous with those of:~~

~~a. Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;~~

~~b. The census blocks established under the latest U.S. Census;~~

~~c. The following visible physical features, readily distinguishable upon the ground:~~

~~1. Roads or streets;~~

~~2. Water features or drainage features;~~

~~3. Ridgelines;~~

~~4. Ravines;~~

~~5. Jeep trails;~~

~~6. Rail features;~~

~~7. Above-ground power lines; or~~

~~8. Major footpaths~~

~~as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps.~~

~~d. Municipalities, as certified by the city clerk on the official map of the city; or~~

~~e. A combination of these boundaries;~~

~~(1a) Alter, where necessary, precinct boundaries so that each precinct is composed solely of contiguous territory;~~

~~(2) Mark all precinct boundaries on the maps sent by the Legislative Services Office or on other maps or electronic databases approved by the Executive Secretary-Director, showing the precinct boundaries in effect as of the time of marking, but with any~~

~~changes effective at a later time as provided by subsection (d) of this section; and~~

~~(3) File, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, with the State Board and the Legislative Services Office the maps identifying the precinct boundaries. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof.~~

~~(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the returned maps and their written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that the county board of elections has complied with the provisions of subsection (a) of this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.~~

~~(c) If the Executive Secretary-Director of the State Board determines that the county board of elections has not complied with the provisions of subsection (a) of this section, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with those boundaries set forth in subsection (a)(1) of this section nearest to those existing precinct boundaries. These altered precincts shall then be the official precincts.~~

~~(d) The changes in precinct boundaries under subsections (b) and (c) of this section shall be made effective not later than January 1, 1997; unless the change would result in placing a precinct in more than one State House of Representatives, State Senate, or Congressional district, in which case it shall be made effective not later than January 1, 2002.~~

~~(e), (f) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 1.~~

~~(g) The Legislative Services Office shall send maps, under subsection (a) of this section, to the counties named below by the dates indicated:~~

~~(1) Maps to be sent not later than January 1, 1993, to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Currituck, Cherokee, Clay, Franklin, Gates, and Hoke;~~

~~(2) Maps to be sent not later than January 1, 1994, to the following counties: Columbus, Dare, Davie, Graham, Greene, Haywood, Hertford, Hyde, Jackson, Lee, Lincoln, Madison, Martin, Mitchell, Montgomery, Northampton, and Pasquotank; and~~

~~(3) Maps to be sent not later than January 1, 1995, to the following counties: Macon, McDowell, Moore, Pamlico, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.~~

~~(h) This section shall apply only to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Cherokee, Clay, Columbus, Currituck, Dare, Davie, Franklin, Gates, Graham, Greene, Haywood, Hertford, Hoke, Hyde, Jackson, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.~~

~~(i) Any county board of elections whose precincts were not approved by the Executive Secretary-Director under the provisions of this section during the year by which maps were to be sent to the county under subsection (g) of this section shall submit precinct boundary changes that comply with subsection (a) of this section to the Legislative Services Office before January 1, 1996, according to directives promulgated by the Executive Secretary-Director.~~

"§ 163-132.3. Alterations to approved precinct boundaries.

(a) No county board of elections ~~of a county listed in G.S. 163-132.1A(b), after January 1, 1990, and no county board of elections of a county listed in G.S. 163-132.2(h), after its precinct boundaries are approved pursuant to G.S. 163-132.2,~~ may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of:

(1) Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;
(2) The census blocks established under the latest U.S. Census or the boundaries contained on the latest preliminary U.S. Census maps, issued under P.L. 94-171, whichever occurs later;
(3) The following visible physical features, readily distinguishable upon the ground:
a. Roads or streets;
b. Water features or drainage features;
c. Ridgelines;
~~d. Ravines;~~
~~e. Jeep trails;~~
f. Rail features; or
g. ~~Above-ground power lines; or~~ Major above-ground power lines;
h. Major footpaths
as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps.
(4) Municipalities, as certified by the city clerk on the official map of the city; or
(5) A combination of these boundaries.

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Secretary-Director the new boundaries of these precincts. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director of the State Board as being in compliance with this subsection. No precinct may be changed under this section between the date its boundaries become effective under G.S. 163-132.1(c) and January 2, 2002. Any changes to precincts during that period shall be made as provided in G.S. 163-132.1(d).

(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, he shall not approve those precinct boundaries. He shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

"§ 163-132.4. Directives.

The Executive Secretary-Director of the State Board of Elections may promulgate directives concerning its duties and those of the county boards of elections under this Article.

"§ 163-132.5. Cooperation of State and local agencies.

The State Budget Office, the Department of Transportation and county and municipal planning departments shall cooperate and assist the Legislative Services Office, the Executive Secretary-Director of the State Board of Elections and the county boards of elections in the implementation of this Article.

"§ 163-132.5A: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1.

"§ 163-132.5B. Exemption from Administrative Procedure Act.

The State Board of Elections is exempt from the provisions of Chapter 150B of the General Statutes while acting under the authority of this Article. Appeals from a final decision of the Executive Secretary-Director of the State Board of Elections under this Article shall be taken to the State Board of Elections within 30 days of that decision. The State Board shall approve, disapprove or modify the Executive Secretary's decision within 30 days of receipt of notice of appeal. Failure of the State Board to act within 30 days of receipt of notice of appeal shall constitute a final decision approving that of the Executive

Secretary. Appeals from a final decision of the State Board under this Article shall be taken to the Superior Court of Wake County.

"§ 163-132.5C. Local acts and township lines.

(a) Notwithstanding the provisions of any local act, a county board of elections need not have the approval of any other county board or commission to make precinct boundary changes required by this Article.

(b) Precinct boundaries established, retained or changed under this Article, or changed to follow a district line where a precinct has been divided in a districting plan, may cross township lines.

"§ 163-132.5D. Retention of precinct maps.

The Executive Secretary-Director of the State Board of Elections shall retain the maps and written descriptions which he approves pursuant to G.S. 163-132.3.

~~"§ 163-132.5E. Precinct maps and voter statistics filed with the Legislative Services Office.~~

~~(a) No later than January 31 of each year, the chairman of each county board of elections shall file with the Legislative Services Office a map showing the county's precincts as of January 1 of that year.~~

~~(b) Not later than January 31 of each year, the chair of each county board of elections shall file with the Legislative Services Office a list of each precinct in the county as of January 1 of that year and the number of registered voters, in each precinct, by political party and race; and, no later than January 31 of each year beginning in 1996, with a numerical breakdown as to the race of registered voters of each political party.~~

~~(c) The Legislative Services Office shall develop and send by mail to each county board of elections by September 15 of each year a standard electronic data format that can be used in the following year by county boards of election as an alternative method of filing the list required by subsection (b) of this section. The standard electronic data format shall be for data provided in international standard ASCII file format on 9-track magnetic tape, 8-millimeter magnetic tape, 5 1/4 inch diskettes, or 3 1/2 inch diskettes. The standard electronic data format shall contain the name of the precinct, and for each precinct the total number of registered voters, the number of registered voters by party affiliation, the number of registered voters by race, and a numerical breakdown as to the race of registered voters in each political party.~~

"§ 163-132.5F. U.S. Census data by precinct.

The State shall request the U.S. Census Bureau for each decennial census to provide summaries of census data by precinct and shall participate in any U.S. Bureau of the Census' program to effectuate this provision.

"§ 163-132.6: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1."

Section 2. Notwithstanding the provisions of Sections 2 and 3 of Chapter 423 of the 1995 Session Laws, the version of G.S. 163-132.3 contained in Section 1 of this act is effective upon this act's becoming law and does not expire. To the extent it is inconsistent with the provisions of this act, Section 3 of Chapter 423 of the 1995 Session Laws is repealed.

Section 3. Section 1 of Chapter 1012 of the 1989 Session Laws reads as rewritten:

"Section 1. (a) The General Assembly finds that:

(1) Largely because of the 1982 amendments to the Voting Rights Act of 1965, the number of cities electing governing boards by districts has increased to more than 50;

(2) The federal constitution and G.S. 160A-23 require that units of government electing on the district basis have district boundaries that follow the one-person-one-vote rule;

(3) The Voting Rights Act of 1965 requires that minorities have the opportunity to elect candidates of their choice;

(4) Census data will not be released until April 1, ~~1991,~~ 2001, and may not be in usable form for redistricting purposes by local governments until several weeks after that;

(5) Many cities are subject to Section 5 of the Voting Rights Act of 1965, requiring federal approval of any changes in district boundaries before filing can even open, a process which can take 60 or more days;

(6) Filing is currently scheduled to open for municipal elections on ~~July 5, 1991;~~ July 6, 2001;

(7) ~~A consent judgement in a federal lawsuit between the City of New York and the Census Bureau may result in adjusted census data being released on July 15, 1991, after filing has already opened,~~ The United States Supreme Court in its 1999 opinion in the case of Department of Commerce vs. United

States House of Representatives has stated that the Census Bureau's plan to use census data for congressional apportionment was invalid, but adjusted data might be able to be used for redistricting itself. Further litigation in the lower courts will continue over which set of census data to use, litigation that likely will extend into 2000 and 2001, presenting possible chaos;

(8) Trying to deal with all of this on an ad hoc, city-by-city basis may result in needless legal expenses, confusion, chaos, and delays;

(9) A uniform system of anticipating these problems needs to be adopted in ~~1990,~~ 1999, which will allow a structured approach by the cities involved, allowing an organized election system while protecting the rights of minorities to be involved in the redistricting process and minimizing litigation;

(10) Changes need to be made now to allow ~~possible adjustment of census data on July 15, 1991, not to occur~~ for the possibility that census related litigation might not be resolved until the middle of the redistricting process, or perhaps even while filing is already open for municipal offices in cities with a district system; and

(11) If cities are unable to complete redistricting in ~~1991~~ 2001 in a timely fashion, it will be far better to put off the elections by six months or a year (depending on the type of electoral system) in an identical method as was allowed in 1991 than to have court-ordered delays or a chaotic election year for candidates and election officials, except that if changes have been adopted but approval under the Voting Rights Act of 1965 is still pending on the date filing is to open, the ~~1991~~ 2001 election should be held under prior district boundaries so as to minimize disruption.

(b) The ~~1991 Session~~ 2000 and 2001 Sessions of the General Assembly may make further changes in the election timetable as more details about the possible July 1991 adjustment of census data become available.

(c) In order to devise a plan that conforms to the Voting Rights Act of 1965, changes in the number of district seats may need to be made, but the current procedural

requirements in the general law for making such changes are too restrictive to allow meaningful use in ~~1991~~ 2001 without the changes made by this act.

Section 4. G.S. 160A-23.1 reads as rewritten:

"**§ 160A-23.1. Special rules for redistricting after ~~1990~~ 2000 census.**

(a) As soon as possible after receipt of federal census information in ~~1991~~ 2001 the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in ~~1991 or 1992.~~ 2001 or 2002.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and:

(1) Does not adopt the changes, or

(2) Does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in ~~1992,~~ 2002, the second primary, if necessary, shall be held on the second primary election date for county officers in ~~1992,~~ 2002, and the general election shall be held on the general election date for county officers in 1992;

(2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in ~~1992~~ 2002 and the election shall be held on the date for the second primary for county officers in ~~1992;~~ 2002;

(3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in ~~1992;~~ 2002;

(4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in ~~1992~~ 2002 and the runoffs, if necessary, shall be held on the date for the second primary for county officers in ~~1992.~~ 2002.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in July ~~1992,~~ 2002, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of ~~1992.~~ 2002."

Section 5. G.S. 163-291(2) reads as rewritten:

"(2) A candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the ~~election.~~ election, except:

a. In 2001 a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

b. In 2002 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of

elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first."

Section 6. G.S. 163-294.2(c) reads as rewritten:

"(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, except:

(1) In ~~1991~~ 2001 candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

(2) In ~~1992~~ 2002 if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails."

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

HOUSE BILL 248: Precinct Boundaries.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Alexander
Date:	May 27, 1999	**Summary by:**	William R. Gilkeson
Version:	H248-PCSRR-002		Staff Attorney

SUMMARY: ***The PCS for House Bill 248 would make several changes to update the statute governing the Precinct Boundary Program. That program is preparing all the State's voting precincts for the 2000 Census and the 2001 redistricting. The bill would extend for two years a partial freezeof precincts while elections and redistricting take place. It would allow counties, under certain circumstances, to postpone the effective date of their new precincts.***

CURRENT LAW: Under current law, North Carolina is participating in a Census Bureau program called the 2000 Census Redistricting Data Program. That law is contained in Article 12A of Chapter 163, which is set out in full in the bill. The purpose of the program is to include in the Bureau's map database for the 2000 Census all the State's voting precincts.

Current law requires all 100 counties to examine preliminary 2000 Census maps and "suggest" to the Bureau where it should place its block boundaries. (This was Phase I of the program; it has already occurred.) Then, as part of Phase II, each county board of elections is to designate on final Census maps its precincts. It must designate them using only the 2000 Census blocks shown on the map. (Exceptions to the rule involve township and municipal lines that will change and mountain ridgelines.)

Once the Census Bureau designates its precincts on the Phase II maps, those precincts are frozen until January 2, 2000. The freeze is only a partial freeze. The county may split its precincts during the freeze if they have grown too crowded (or for any other reason), but only if it uses Census block lines to split them. Current law also has an automatic mechanism for changing a precinct during the freeze where the precinct tracked a city limits line and the city has annexed outward.

After the freeze, the county board of elections has broader leeway to change precinct lines. It may, for example, use features after the freeze that were not designated as 2000 block boundaries. They must, however, be some kind of visible feature: a street or road, a water or drainage feature, a rail feature, or an above-ground power line. Those are included in current law because they are believed to be the kind of features likely to be accepted by the Census Bureau as block boundaries for 2010. Not included in the current post-freeze statute are certain kinds of features that the Census Bureau is less likely to accept as block boundaries—major footpaths, jeep trails, ravines, and ridgelines. Those were included on earlier lists in an effort to find ways to accommodate traditional precincts. But since, with difficulty, those have been accommodated, it was felt that in making decisions about future precincts, counties should avoid reliance of those lines.

BILL ANALYSIS: In addition to a number of purely technical changes in Article 12A, the bill makes the following substantive changes:

1. Alters the law's description of the Phase II process to bring it up to date with the way it is currently being conducted. The process, for example, will now use electronic means instead of relying solely on paper maps.

2. Gives the county flexibility in dealing with city annexations during the freeze. Current law says that if a precinct line follows a city limits line that changes in the annexation, the precinct line authomatically floats out with the new city limits. The bill would give the county the option of letting the precinct line float out or chosing a nearby feature, if it is a Census block.

3. Revises the list of features that counties may use to designate precinct lines after the freeze. Current law limits that to Census block lines, township and city limit lines, roads and streets, water features, rail features, and above-ground power lines. Recognizing strong feeling in some mountain counties, the PCS would add major footpaths and ridgelines. ***(This was not in the House-passed bill; it is new in the PCS.)***

4. Repeals an outdated requirement that county boards of elections send precinct maps and registered voter data to the Legislative Services Office every year by January 31.

5. Allows counties to postpone the effective date of their Phase II precincts. Any county could postpone the new precincts until January 1, 2000, to get past this year's municipal elections. A county could get special permission to postpone a new precinct line till January 1, 2001, if it could show the State Election Director that putting the new precinct in place would result in an electoral district split for the 2000 elections. The county would also have to show that, even though it would not be using the new precincts in 2000, it could nonetheless provide reasonably accurate voter registration data for those new precincts as of the 2000 elections. ***(This was not in the House-passed bill; it is new in the PCS.)***

6. Extends the freeze from January 2, 2000, to January 2, 2002.

7. Provides for special schedules for municipal elections in cases where the municipality does not receive 2000 Census data in time to redraw City Council districts in time for the 2001 municipal elections. To comply with the one-person/one-vote requirement, those City Council districts must be redrawn before the 2001 elections. ***(This was not in the House-passed bill; it is new in the PCS.)***

BACKGROUND: The purpose of the Census Redistricting Data Program is to put into the Census Bureau's map database for the 2000 Census all the State's voting precincts. That will enable the State to receive 2000 Census data by precinct. Since the State uses the Census database as the basis for redistricting, the precincts being in the database will mean that when redistricting is done in 2001, precinct splitting could be more easily avoided.

The purpose of the freeze was to make a snapshot of the State's precincts just before the taking of the Census in April 2000. That is how the program was handled before the 1990 Census. Then, however, Phase II was begun almost 2 years before the 1990 Census. This time, Census production problems have delayed the start of Phase II so it is now just beginning. Its completion by January 2, 2000, while still likely, seems less certain than it once did.

Moreover, the snapshot would be more useful if it included returns from the 2000 elections. And there would be a further advantage if the basic outlines of precincts would stay as they appear on the redistricting database until the legislative, congressional, and local redistricting lines are completed in 2001. That would enable the redistricters and the county boards of elections to avoid creating precinct/district splits, often the bane of election administrators.

During the freeze, as indicated above, county boards of elections would still be able to split precincts that had grown too populous. They could also adapt their precinct lines to annexations.

At some point early in the decade, it makes sense to permit counties to designate precincts using features that were not designated as 2000 block boundaries. New roads are built. The face of the county changes over the years. Therefore, the partial freeze is lifted.

Two sections of the current Article 12A are vestiges of the State's effort to prepare the precincts during the 1990s for the 2000 Census Redistricting Data Program that is occurring now. One is 163-132.2, in which 52 counties were required during the 1990s to place their precincts on township or city limits lines or on visible features for the first time. The other is 163-132.3, in which counties that have once brought their precincts into compliance are required to maintain them in compliance as they change them during the decade. Both those statutes require the counties to submit their precinct lines or changes in line to the State Election Director, who with the advice of the Legislative Services Office will rule on whether the precincts comply with the law. Both thos statutes have a wider list of visible features than does the post-freeze precinct change statute. The current 163-132.3(a) will expire January 2, 2000, and will be replaced by the post-freeze precinct change statute.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1048
Second Edition Engrossed 4/28/99

Short Title: Amend Rule 4/Manner of Service. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(l) Process -- Notice of manner of service. -- When service of process is by means other than personal delivery, notice of the manner of service shall be filed with the court within 20 days after the date of service."

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

HOUSE BILL 1048:
Amend Rule 4/Manner of Service

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Miller
Date:	June 1, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***House Bill 1048 would amend the Rules of Civil Procedure to require that when service of process is by a means other than personal service on a defendant, that a notice of how the process was served be filed with the court within 20 days of service.***

CURRENT LAW: Rule 4 of the Rules of Civil Procedure sets forth the manner in which the summons and complaint in a civil action can be served on a defendant in a lawsuit. In addition to the service of process being served personally on the defendant, Rule 4 also permits service by registered or certified mail, return receipt requested and by publication in newspapers. Return of personal service is signed by the sheriff or deputy. Proof of service by mail or publication is by affidavit, but current law does not require any notice to the court as to the manner of service if service is not in person.

BILL ANALYSIS: The bill would add a new subsection (l) to Rule 4 to require that where the plaintiff serves process on the defendant by a method other than by personal service, the plaintiff must file a notice with the court stating what manner of service was used. The bill requires that this notice be filed within 20 days after the date of service.

The bill does not specify the effect of failing to file the notice or the effect if the notice is filed after 20 days after the date of service.

EFFECTIVE DATE: The bill is effective October 1, 1999 and applies to actions commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 881

Short Title: Campaign Reform Act of 1999. (Public)

Sponsors: Senators Gulley; Ballance, Cooper, Garrou, Hagan, Kinnaird, Lucas, Martin of Guilford, Miller, Perdue, Phillips, Rand, and Reeves.

Referred to: Rules and Operations of the Senate.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CAMPAIGN REFORM ACT OF 1999.

The General Assembly of North Carolina enacts:

Section 1. This act shall be called "The Campaign Reform Act of 1999."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 881
Proposed Committee Substitute -- S881-PCSRR-008

Short Title: Campaign Reform Act of 1999. (Public)

Sponsors:

Referred to: Rules and Operations of the Senate.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CAMPAIGN REFORM ACT OF 1999.

The General Assembly of North Carolina enacts:

Section 1. This act shall be called "The Campaign Reform Act of 1999."

-- STAND BY YOUR AD.

Section 2.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new Part to read:

"Part 1A. Disclosure Requirements for Media Advertisements.

"§ 163-278.39. Basic disclosure requirements for all political campaign advertisements.

(a) Basic Requirements. -- It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an expenditure or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: 'Paid for by ..... [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor].' In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(3) The sponsor states in the advertisement its position for or against the candidate, provided that this subdivision applies only if the advertisement supports or opposes the nomination or election of on or more clearly identified candidates.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either 'Authorized by [name of candidate], candidate for [name of office]' or 'Not authorized by a candidate.' This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. -- In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement

covered by subsection (a) of this section, the disclosure statement shall last at least three seconds.

(c) Misrepresentation of Authorization. -- Notwithstanding G.S. 163-278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.

"**§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.**

(a) Expanded Disclosure Requirements. -- In addition to the basic disclosure requirements in G.S. 163-278.39, any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section.

(b) Disclosure Requirements for Television. --

(1) Candidate advertisements on television. -- Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: 'I am (or "This is...") [name of candidate], candidate for [name of office], and I (or "my campaign...") sponsored this ad.'

(2) Political party advertisements on television. -- Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: 'The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office].' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television. -- Television advertisements purchased by a political action committee supporting or

opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: 'The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office].' The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on television by an individual. -- Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: 'I am [individual's name], and I sponsored this advertisement opposing/sponsoring [name of candidate] for [name of office].'

(5) Advertisements on Television by Another Sponsor. -- Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which support or oppose the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: '[Name of sponsor] sponsored this ad.'

(6) All advertisements on television. -- In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

(c) Disclosure Requirements for Radio. --

(1) Candidate advertisements on radio. -- Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing

the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: 'I am (or "This is..") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement].'

(2) Political party advertisements on radio. -- Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: 'This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party].' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio. -- Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: 'This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee.' The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on radio by an individual. -- Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following

words: 'I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me.'

(5) Advertisements on Radio by Another Sponsor. -- Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: '[Name of sponsor] paid for (or "sponsored" or "furnished") this ad.'

(d) Placement of Disclosure Statement in Television and Radio Advertisements. -- In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. -- In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. -- If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. -- Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate

for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The court shall award reasonable attorneys' fees to a plaintiff candidate who prevails in an action under this section. The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. -- Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. -- Television or radio outlets shall not be liable under this

section for carriage of political advertisements that fail to include the disclosure requirements provided for in this section.

(i) No Criminal Liability. -- Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability for any person.

"**§ 163-278.39B. Definitions.**

As used in this Part:

(1) 'Advertisement' means any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under this Article.

(2) 'Candidate' means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9.

(3) 'Candidate campaign committee' means any political committee organized by or under the direction of a candidate.

(4) 'Full-screen' means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

(5) 'Print media' means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. A 'mass mailing' is a mailing with more than five hundred (500) pieces.

(6) 'Political action committee' has the same meaning as 'political committee' in G.S. 163-278.6(14), except that 'political action committee' does not include any political party or political party organization.

(7) 'Political party organization' means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(8) 'Radio' means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(9) 'Scan line' means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

(10) 'Sponsor' means a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement.

(11) 'Television' means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(12) 'Unobscured' means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face.

"§ 163-278.39C. Scope of disclosure requirements.

The disclosure requirements of this Part apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under this Article, except that the disclosure requirements of this Part:

(1) Do not apply to an individual who makes uncoordinated independent expenditures aggregating less than one thousand dollars ($1,000) in a political campaign; and

(2) Do not apply to an individual who incurs expenses with respect to a referendum.

The disclosure requirements of this Part do not apply to any advertisement the expenditure for which is required to be disclosed by G.S. 163-278.12A alone and by no other law."

Section 2.(b) G.S. 163-278.16 reads as rewritten:

"§ 163-278.16. Regulations regarding ~~contributions, expenditures and media advertising.~~ timing of contributions and expenditures.

(a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

~~(f) No media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual unless~~

~~(1) It bears the legend or includes the statement: "Paid for by (or Sponsored by)..... (Name of candidate, political committee, referendum committee, individual)";~~

~~(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1), provided that this subdivision applies only if the sponsor is a political committee or referendum committee;~~

~~(3) The sponsor states in the media advertisement its position:~~

~~a. For or against the candidate; or~~

~~b. For or against an opposing candidate~~

~~provided that this subdivision applies only if the media advertisement is made for or against a candidate; and~~

~~(4) The sponsor states in the media advertisement its position for or against the ballot measure; provided this subdivision applies only if the media advertisement is made for or against a ballot measure.~~

~~The requirements of subdivisions (3) and (4) of this subsection do not apply to any print advertisement less than two inches by two inches in size, or to any radio or television advertisement of less than 20 seconds in length.~~

~~The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the~~

~~statement required herein. For purposes of this subsection, "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts.~~

~~(g) All printed matter for a political purpose from a political party or political committee which identifies a candidate that party or committee is opposing shall indicate in type no smaller than 12 point the name of the political party or political committee and the name of the candidate that is intended to benefit from the printed matter.~~"

Section 2.(c) G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor."

Section 2.(d) This section becomes effective January 1, 2000, and applies to all contributions and expenditures made or accepted on or after that date.

-- PRIMA FACIE EVIDENCE THAT COMMUNICATIONS ARE "TO SUPPORT OR OPPOSE ONE OR MORE CLEARLY IDENTIFIABLE CANDIDATES."

Section 3.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.14A. Prima facie evidence that communications are 'to support or oppose the nomination or election of one or more clearly identified candidates.'

(a) Any of the following three patterns of evidence shall constitute a prima facie case that an individual or other entity acted 'to support or oppose the nomination or election of one or more clearly identified candidates':

(1) Evidence of financial sponsorship of communications to the general public that use phrases such as 'vote for', 're-elect', 'support', 'cast your ballot for', '(name of candidate) for (name of office)', '(name of candidate) in (year)', 'vote against', 'defeat', 'reject', 'vote pro-(policy position)' or 'vote anti-(policy position)' accompanied by a list of candidates clearly labeled 'pro-(policy position)' or 'anti-(policy position),' or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc. which say '(name of

candidate)'s the One,' '(name of candidate) '98,' '(name of candidate)!,' or the names of two candidates joined by a hyphen or slash.

(2) Evidence of financial sponsorship of communications to the general public that:

a. Contain references to a clearly identified candidate in an election;

b. Are targeted to the electorate for that election;

c. Occur through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, telephone campaign, communications medium, or any type of general public political advertising;

d. Involve payment of more than $3,000 to communicate, provided that all communications making up the total cost refer to the same candidate; and

e. Are made within sixty days before an election in which the candidate is running.

(3) Evidence that an entity or agent for that entity made any public statement that one of the entity's purposes is to support or oppose a clearly identified candidate in an election and the entity financially sponsors communications to the general public that:

a. Contain references to that candidate in which the candidate is clearly identified;

b. Are targeted to the electorate for that election;

c. Occur through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, telephone campaign, communications medium, or any type of general public political advertising; and

d. Involve payment of more than $3,000 to communicate, provided that all communications making up the total cost refer to the same candidate.

In rebutting the prima facie case, the defendant may offer evidence that the actions were not intended to support or oppose the nomination or election of one or more clearly identified candidates.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation if it:

(1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;

(2) Is distributed by a corporation solely to its stockholders and employees; or

(3) Is distributed by any organization, association, or labor union solely to its members or to subscribers who pay for its publication."

Section 3.(b) G.S. 163-278.34A reads as rewritten:

"**§ 163-278.34A. Presumptions.**

In any proceeding brought pursuant to this Article in which a presumption arises from the proof of certain facts, the ~~defendant has the burden of offering some evidence to rebut the presumption. The~~ the presumption shall be rebuttable, but State bears the ultimate burden of proving the essential elements of its case."

Section 3.(c) This section is effective when it becomes law.

-- SETTING STATUTE OF LIMITATIONS AT FIVE YEARS FOR CAMPAIGN FINANCE MISDEMEANORS.

Section 4.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.27A. Five-year statute of limitations.**

Prosecution for a misdemeanor brought under this Article shall be barred after five years have expired from the date the violation occurred."

Section 4.(b) This section becomes effective December 1, 1999, and applies to offenses occurring on and after that date.

--CHANGING THE STATE BOARD OF ELECTIONS'S STATUS UNDER THE ADMINISTRATIVE PROCEDURE ACT.

Section 5.(a) G.S. 150B-1(c) reads as rewritten:

"(c) Full Exemptions. -- This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner

reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The State Board of Elections and the Executive Secretary-Director of the State Board of Elections, provided that, when promulgating rules they shall follow the procedures in subsections (a) through (g) and subsection (i) of G.S. 150B-21.2.

Section 5.(b) G.S. 163-278.23 reads as rewritten:

"**§ 163-278.23. Duties of Executive Secretary-Director of Board.**

The Executive Secretary-Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Secretary-Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, or media required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement required by this Article.

The Executive Secretary-Director of the Board of Elections shall issue written ~~rulings~~ opinions to candidates and may issue written ~~rulings~~ opinions to the communications media, political committees, and referendum committees upon request, regarding filing procedures and compliance with this Article. Any such ~~ruling~~ opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, or referendum committees rely on and comply with the ~~ruling~~ opinion of the Executive Secretary-Director of the Board of Elections, then prosecution or civil action on account of the

procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Secretary-Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Secretary-Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code."

Section 5.(c) G.S. 163-278.34(a1) reads as rewritten:

"(a1) The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a ~~petition for a contested case under Article 3 of Chapter 150B of the General Statutes.~~ protest or request for waiver of the penalty with the State Board of Elections. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. Consistent with G.S. 115C-437, the State Controller shall pay the clear proceeds of civil penalties collected under this section to the County School Fund in the county in which the person charged with the violation resides. The State Controller shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the County School Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections."

Section 5.(d) This section is effective when this act becomes law. The exemptions set forth in subsection (a) of this section apply to any rules promulgated by the State Board of

Elections at any time and to any contested case commenced on or after the date this act becomes law.

--- PROHIBIT FUND-RAISING FROM LOBBYISTS AND RELATED POLITICAL COMMITTEES.

Section 6.(a) G.S. 163-278.13B(c) reads as rewritten:

" (c) Prohibited Contributions. -- While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee."

Section 6.(b) This section becomes effective October 1, 1999, and applies to all contributions made, accepted, or solicited on or after that date.

-- REQUIRING MONTHLY REPORTS TO BOARDS OF ELECTIONS OF DEATHS AND FELONY CONVICTIONS.

Section 7.(a) G.S. 163-82.14(b) reads as rewritten:

"(b) Death. -- The Department of Health and Human Services, on or before the fifteenth day of ~~March, June, September, and December,~~ every month, shall furnish free of charge to each county board of elections a certified list of the names of deceased persons who were residents of that county. The Department of Health and Human Services shall base each list upon information supplied by death certifications it received during the preceding ~~quarter.~~ month. Upon the receipt of the certified list, the county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

Section 6.(b) G.S. 163-82.14(c)(1) reads as rewritten:

"(1) Report of Conviction Within the State. -- The clerk of superior court, on or before the fifteenth day

of ~~March, June, September, and December of~~ every ~~year,~~ month, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar ~~quarter.~~ month. Any county board of elections receiving such a report about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible."

Section 7.(c) This section becomes effective January 1, 2000.

-- EXPANDING THE "RACE" CATEGORY ON THE VOTER REGISTRATION FORM.

Section 8.(a) G.S. 163-82.4 reads as rewritten:

"(a) Information Requested of Applicant. -- The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity,

gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters."

Section 8.(b) This section becomes effective January 1, 2002.

Section 9. There is appropriated from the General Fund to the State Board of Elections the sum of eighty-five thousand dollars ($85,000) for the 1999-2000 fiscal year and the sum of eighty-five thousand dollars ($85,000) for the 2000-2001 fiscal year for the purpose of implementing the provisions of this act.

Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

Section 11. The provisions of this act are severable. If any section, subsection, subdivision, or sub-subdivision or this act or of any statute that it amends is held invalid by a court of competent jurisdiction, the invalidity does not affect any other portion or portions of this act that can be given effect without the invalid provision.

Section 12. This act is effective when it becomes law.

SENATE BILL 881:
Campaign Reform Act of 1999.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	June 1, 1999	**Summary by:**	William R. Gilkeson
Version:	S881-PCSRR-008		Staff Attorney

SUMMARY: The PCS to Senate Bill 881 would make these changes to the election laws:

1. *Section 1 of the bill simple states the bill's title: "The Campaign Reform Act of 1999."*
2. *Requires sponsors of radio and TV political ads to accept responsibility for the ads' contents through personal appearances in the ads. This part of the bill, called "Stand by Your Ad," passed the Senate in 1997.*
3. *Sets out 3 ways in which a prima facie case could be made that someone "supports or opposes the nomination or election of one or more clearly identified candidates." That phrase is the key to campaign finance regulation under the statutes as amended by House Bill 921 in April.*
4. *Extends from 2 to 5 years the statute of limitations for campaign finance misdemeanors.*
5. *Exempts the State Board of Elections from many of the requirements of the Administrative Procedure Act.*
6. *Clarifies that lobbyists and lobbyist-connected PACs are prohibited, not only from contributing to legislative candidates during legislative sessions, but also from soliciting contributions on those candidates' behalf.*
7. *Requires monthly, rather than quarterly, reports to the county boards of elections of felony convictions and deaths.*
8. *Requires that voter registration forms after the 2000 Census will ask registrants not only for race, but also ethnicity. The race and ethnicity categories would be the same as those used by the Census Bureau.*

1. **Title: "Campaign Reform Act of 1999."**

2. **Stand by Your Ad.** The bill requires any sponsor of an ad supporting or opposing the nomination or election of one or more clearly identified candidates to disclose in the ad whether the ad is authorized by a candidate. This would be in addition to basic disclosure requirements already in place. In a radio or television ad supporting or opposing a candidate, the sponsor of the ad would have to speak the required disclosure statements personally. In a television ad supporting or opposing a candidate, the sponsor's face would have to appear on the screen the whole time the sponsor was speaking the required disclosure.

   Current Law. Current State law requires that every "media ad" must contain the identification "Paid for by (or "Sponsored by) ... [the name of the sponsor]." If the sponsor is a political committee or referendum committee, the I.D. must use the name that it is required to use, identifying the parent entity of the committee (corporation, labor union, professional association) or the economic interest of the committee, if identifiable. And the I.D.

must also state whether the sponsor supports or opposes a candidate or ballot measure. Current law defines "media" to include broadcast, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts. The duty is one for the media as well as the sponsor. The penalty is a Class 2 misdemeanor.

Current federal law places the following disclosure restrictions on radio and television outlets licensed by the Federal Communications Commission:

- Any ad must disclose the name of the person sponsoring the ad, or the person on behalf of whom the ad is sponsored. The disclosure shall fully and fairly disclose the true identity of that person.
- Any political ad on television must show the sponsor identification for a least 4 seconds in letters that take up at least 4% of the vertical picture height.

In addition, a candidate is entitled to the "lowest unit charge" of a broadcast station if that candidate makes a personal appearance, by face or voice, during the ad. Through the Federal Communications Act, the federal government has pre-empted regulation of what television and radio must do, although the 1983 Fifth Circuit U.S. Court of Appeals decision in *KVUE v. Moore* says that there can be aspects of the way radio and TV outlets handle advertising that federal law doesn't address and therefore the States can regulate. What the federal law does not do is regulate the behavior of State candidates and political committees. They are under the jurisdiction of State law. The bill seeks to fill that gap, requiring candidates and other State-regulated political sponsors, rather than the federally regulated broadcasters, to put certain disclosures in their ads.

The bill contains two sets of requirements:

1. Basic Requirements for any advertisement relating to an election or referendum, if the sponsor of the ad is a candidate, party, PAC, or individual required to file a financial report, except that individuals would not be covered who spent less than $1,000 per election on an ad.
2. Expanded Requirements for ads on TV and radio that support or oppose a candidate.

The Basic Requirements repeat current law, with these changes:

- If a print media ad supports or opposes a candidate, the ad must say whether or not it is authorized by a candidate.
- "Print media" is defined so as to include not only newspapers, periodicals, and billboards, but also pamphlets and cards.
- The bill removes a statement in current law that makes the print media liable for what appears in its ads.
- The disclosure statement on a print media ad must take up at least 10% of the face of the ad (or 10% of one page of a multi-page ad).
- Misrepresentation by a sponsor in the disclosure statement is raised to a Class 1 misdemeanor.

The Expanded Requirements state that on television and radio ads the sponsor of an ad supporting or opposing a candidate or candidates must appear in person and acknowledge sponsorship of the ad.:

- If the sponsor is a candidate, the candidate must appear. On television and radio, that means the candidate must speak the words "I am Candidate X and I sponsored this ad." On television, when the candidate is speaking, a picture of that candidate must fill the screen.
- If the sponsor is a political party organization, or political action committee, the chair, executive director, or treasurer of the party must speak the words, "This ad supporting/opposing Candidate X for Office Y was paid for by the Z Party (or Z political action committee)." Again, on television,

the speaker's picture must fill the screen while while he or she is talking. The sponsor must choose whether the ad supports or opposes a candidate.

- If the sponsor is an individual other than the candidate, that individual must speak the words, "I am So-and-So, and this ad supporting/opposing Candidate X for Office Y was paid for by me." Again, there is the same visual requirement for television, and the same choice of whether the ad supports or opposes.

If there is a visual legend accompanying the picture of the talking sponsor, it must be 32 scan lines (a TV technical term) in height.

Enforcement of Expanded Requirements. For violating the Expanded Requirements, the bill does not place any liability in addition to federal law on TV or radio outlets. On sponsors, the bill places no criminal liability, but it establishes a monetary civil remedy for a candidate who has complied with the requirements against an opposing candidate or other sponsor who has violated them. Damages would be the value of the ads that were in violation. If the plaintiff can show that he or she notified the sponsor that an ad was in violation and the sponsor continued to run the ad, the damages can be trebled.

3. **Prima Facie Case That a Communication "Supports or Opposes the Nomination or Election of One or More Clearly Identified Candidates."** The definitions of "political committee" and "expenditure" in House Bill 921 (ratified last month) are pegged to the term "supporting or opposing the nomination or election of a clearly identified candidate." The draft sets out three sets of facts that raise a presumption that a sponsor is "supporting or opposing the nomination or election of one or more clearly identified candidates":

   1. Evidence that the sponsor has used typical words of advocacy. A non-inclusive list is set out of phrases such as "vote for," "elect," and "defeat."

   2. Evidence that the sponsor has met a 5-part bright line test:
      - Has put in the ad a reference to a clearly identified candidate.
      - Has targeted the electorate the candidate faces in the election.
      - Has communicated through various kinds of public media.
      - Has spent more than $3,000.
      - Has done the communication within 60 days of an election in which the candidate is running.
   3. Evidence that the sponsor has met the first 4 of the 5 parts, but although the ad is not in the last 60 days, the sponsor has publicly stated that one of its purposes is to support or oppose a candidate in an election.

   The sponsor could rebut the evidence by showing it had a contrary intent. (The PCS contains, in Section 3.(b), a revision suggested in Senate Judiciary I in April of the language about presumptions that was ratified in House Bill 921.)

   Specific exceptions are set out for news stories, commentaries and editorials in media of general circulation, for communications distributed by a corporation to its stockholders or employees or by an association or union to its members or to subscribers who pay for its publication.

4. **Five-Year Statute of Limitations.** Under current law, most campaign finance offenses are Class 2 misdemeanors. The statute of limitations on most misdemeanors is two years. The bill would extend the statute of limitations on campaign finance misdemeanors to five years.

5. **Exemption from the APA.** The bill would substantially exempt the State Board of Elections from the Administrative Procedure Act. The State Board would still be required to follow the notice and hearing procedures for rulemaking that are set out in the APA, but its rules would not be subject to approval by the Rules Review Commission. In addition, the bill would require the Executive Director of the State Board to submit the rulings (opinions) he now makes on campaign matters to the Codifier of Rules for publication in the North Carolina Register and the N.C. Administrative Code.

6. **Lobbyist Fundraising for Legislative Candidates.** Current law prohibits lobbyists and lobbyist-connected political committees from making contributions to candidates for the General Assembly or the Council of State. That law has been upheld by the U.S. 4th Circuit Court of Appeals against a First Amendment challenge in *N.C. Right to Life, Inc. vs. Bartlett*. But it is not clear that the law prohibits lobbyists and their political committees from soliciting contributions on behalf of those candidates from others – "fundraising" for them. This section would make clear that such activity would be against the law.

7. **Requiring Monthly Reports to Board of Elections of Deaths and Felony Convictions.** Current law requires the State Department of Health and Human Services to report quarterly to each county board of elections a list of the certified deceased persons who were residents of that county. The clerks of court are required to report quarterly to the county board of elections a list of all felony convictions in that county. This section would increase the frequency of both reports from quarterly to monthly. The section would go into effect January 1, 2000.

8. **Race and Ethnicity on the Voter Registration Form.** Currently the statute requires the State Board of Elections to develop a standard voter registration application form. One of the items of information the statute says the form shall request of the applicant is "Race." The statute now offers no further guidance to the board on that matter. The current form contains a Race box with the following choices:
   - White,
   - Black,
   - Am. Indian,
   - Other.

   The bill would change the statute to direct the State Board to put on the form choices for both "Race" and "Ethnicity." It would require the State Board to list as choices any race or ethnicity category that the most recent U.S. Census shows composes at least 1% of the total population of North Carolina. For the 2000 Census, the Census Bureau plans to use the following categories for "Race":
   - White
   - Black or African American.
   - American Indian or Alaska Native.
   - Asian.
   - Native Hawaiian or Other Pacific Islander.

   The Census Bureau plans to use the following categories for "Ethnicity":
   - Hispanic or Latino.
   - Not Hispanic or Latino.

   (The bill would not require that the State Board use the same names for the categories that the Census Bureau uses.) This section of the bill would go into effect after the return of the 2000 Census data.

The State Board of Elections would receive appropriations of $85,000 for each year of the biennium for the implementation of the act.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-1-99

S. B. No. 881 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
) SOLES
Sen.)

1 moves to amend the bill on page 14, line 19
2 ( ) WHICH CHANGES THE TITLE
3 by
4 deleting the word "the" before
5
6 "presumption" and inserting the
8 word "the" before "State".
9
10
11
12
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15
16
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

CHAPTER 150B
OF THE
GENERAL STATUTES OF NORTH CAROLINA

[The following excerpt contains the statutory provisions of the Administrative Procedure Act as amended by Senate Bill 1366 effective 7/1/98; House Bill 1356 effective 8/31/98; and House Bill 1318 effective 7/1/99. OAH Revised 1/13/99.]

Article 1.
General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. -- This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. -- This Chapter confers procedural rights.

(c) Full Exemptions. -- This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(d) Exemptions From Rule Making. -- Article 2A of this Chapter does not apply to the following:

(1) The Commission.

(2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.

(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.

(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

(7) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in administering the provisions of Parts 2 and 3 of Article 3 of Chapter 135 of the General Statutes.

(e) Exemptions From Contested Case Provisions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993 c. 501, s. 29, effective July 23, 1993.

(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The Occupational Safety and Health Review Board.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13aa) shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.

(f) Exemption for the University of North Carolina. -- Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to the University of North Carolina.

§ 150B-2. Definitions.

As used in this Chapter,

(01) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.

(1) "Agency" means an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

(1a) "Adopt" means to take final action to create, amend, or repeal a rule.

(1b) "Codifier of Rules" means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.

(1c) "Commission" means the Rules Review Commission.

(2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.

(2a) Repealed by Session Laws 1991, c. 418, s. 3, effective October 1, 1991.

(2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.

(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.

(6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:
   1. Declaratory rulings under G.S. 150B-4.
   2. Orders establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.

(8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(9) Repealed by Session Laws 1991, c. 418 s. 3, effective October 1, 1991.

§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

(d) This section does not apply to the following:

(1) Revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, 110-142.2.

(2) Refusal to renew an occupational license pursuant to G.S. 87-10.1, 87-22.2, 87-44.2 or 89C-18.1, based solely on a Department of Revenue determination that the licensee owes a delinquent income tax debt.

§ 150B-4. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

(b) Repealed by SB 187 effective April 30, 1997.

§§ 150B-5 through 150B-8: Reserved for future codification purposes.

Article 2.
Rule Making.

§§ 150B-9 through 150B-16: Repealed by Session Laws 1991, c. 481, s. 5, effective October 1, 1991.

§ 150B-17: Recodified as § 150B-4 by Session Laws 1991, c. 418, s. 4, effective October 1, 1991.

Article 2A.
Rules.
Part 1. General Provisions.

§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article.

§ 150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

(1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.

(2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.

(3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.

(4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).

(5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:
   a. A service to a State, federal, or local governmental unit.
   b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
   c. A transcript of a public hearing.
   d. A conference, workshop, or course.
   e. Data processing services.

(6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. – A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. – An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. – If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of rule-making proceedings it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes after the notice of rule-making proceedings may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) Review. – Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Repealed by Session Laws 1995 c. 18 s. 7, effective August 3, 1996.

§ 150B-21. Agency must designate rule-making coordinator; duties of coordinator.

(a) Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator shall serve as the liaison between the agency, other agencies, units of local government, and the public in the rule-making process. The coordinator shall report directly to the agency head.

(b) The rule-making coordinator shall be responsible for the following:

(1) Preparing notices of public hearings.
(2) Coordinating access to the agency's rules.
(3) Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note has been completed as required by G.S. 150B-21.4(b).
(4) Consulting with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to determine which local governments would be affected by any proposed rule action.
(5) Providing the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with copies of all fiscal notes required by G.S. 150B-21.4(b), prior to publication in the North Carolina Register of the proposed text of a permanent rule change.
(6) Coordinating the submission of proposed rules to the Governor as provided by G.S. 150B-21.26.

(c) At the earliest point in the rule-making process and in consultation with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and with samples of county managers or city managers, as appropriate, the rule-making coordinator shall lead the agency's efforts in the development and drafting of any rules or rule changes that could:

(1) Require any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;
(2) Increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government; or
(3) Otherwise affect the expenditures or revenues of a unit of local government.

(d) The rule-making coordinator shall send to the Office of State Budget and Management for compilation a copy of each final fiscal note prepared pursuant to G.S. 150B-21.4(b).

(e) The rule-making coordinator shall compile a schedule of the administrative rules and amendments expected to be proposed during the next fiscal year. The coordinator shall provide a copy of the schedule to the Office of State Budget and Management in a manner proposed by that Office.

(f) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the rule-making coordinator shall:

(1) Attach to the proposed rule a certificate prepared by the rule-making coordinator identifying the federal

law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons for why the proposed rule is required by law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the proposed rule; and

(2) The rule-making coordinator shall maintain a copy of the federal law and shall provide to the Office of State Budget and Management for compilation the citation to the federal law requiring or pertaining to the proposed rule.

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. – An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A federal regulation.
(5) A court order.
(6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

(a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife Resources Commission may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical to protect the public health, safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient operation of game lands by establishing any of the following:

(1) No wake zones;
(2) Hunting or fishing seasons;
(3) Hunting or fishing bag limits;
(4) Management of public game lands as defined in G.S. 113-129(8a).

When the Wildlife Resources Commission adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules.

(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;
(2) Accept oral and written comments on the proposed temporary rule; and
(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection.

(a3) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a) or (a1) of this section. In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a) or (a1) of this section, the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule

in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) or (a1) of this section and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court shall not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. Publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings for a permanent rule if the permanent rule is substantially the same as the published temporary rule, unless the agency published a notice of rule-making proceedings at least 60 days before it adopted the temporary rule.

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. – Before an agency adopts a permanent rule, it must take the following actions:

(1) Publish a notice of rule-making proceedings in the North Carolina Register, unless the proposed rule is substantially the same as a temporary rule published in the North Carolina Register.
(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
(3) Publish the text of the proposed rule in the North Carolina Register.
(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Notice of Rule-Making Proceedings. – A notice of rule-making proceedings published in the North Carolina Register must include all of the following:

(1) A statement of the subject matter of the proposed rule making.
(2) A short explanation of the reason for the proposed action.
(3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.
(4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

Publication in the North Carolina Register of an agency's rule-making agenda satisfies the requirements of this subsection if the agenda includes the information required by this subsection.

(c) Text After Notice of Rule-Making Proceedings. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.
(2) A short explanation of the reason for the proposed rule.
(3) A citation to the law that gives the agency the authority to adopt the rule.
(4) The proposed effective date of the rule.
(5) The date, time, and place of any public hearing scheduled on the rule.
(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

An agency shall not publish the proposed text of a rule until at least 60 days after the date the notice of rule-making proceedings for the proposed rule was published in the North Carolina Register.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of rule-making proceedings or the text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice of rule-making proceedings on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and all the following apply:

(1) The notice of text does not schedule a public hearing on the proposed rule.

(2) The agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published.

(3) The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

(f) Comments. – An agency must accept comments on a notice of proposed rule-making proceedings published in the North Carolina Register until the text of the proposed rule that results from the notice is published. An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and that requires a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on the text of any other proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. – An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on either the notice of rule-making proceedings or the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part.

(h) Explanation. -- An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule.

§ 150B-21.3. Effective date of rules.

(a) Temporary Rule. – A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. – A permanent rule approved by the Commission becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a different effective date applies under this section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section.

(c) Executive Order Exception. – The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission and has not become effective under subsection (b) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill ratified on or before the day of adjournment

of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill ratified by the General Assembly is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill ratified by the General Assembly within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(d) Legislative Day and Day of Adjournment. – As used in this section:

(1) A "legislative day" is a day on which either house of the General Assembly convenes in a regular session.

(2) The "day of adjournment" of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.

(3) The "day of adjournment" of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

(e) OSHA Standard. – A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

(f) Technical change. – A permanent rule for which no notice or hearing is required under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission.

§ 150B-21.4. Fiscal notes on rules.

(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency may ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact.

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least five million dollars ($5,000,000) in a 12-month period.

(b2) Content. – A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.

(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.

(3) A description of the purpose and benefits of the proposed rule change.

(4) An explanation of how the estimate of expenditures was computed.

(c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment. – An agency is not required to publish a notice of rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.

(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.

(4) Change information that is readily available to the public, such as an address or a telephone number.

(5) Correct a typographical error in the North Carolina Administrative Code.

(6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. – An agency is not required to publish a notice of rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.

(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.

(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. – The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

(1) Another rule or part of a rule adopted by the agency.

(2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.

(3) Repealed by SB 187 effective April 30, 1997.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material.

§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.

When a law that authorizes an agency to adopt a rule is repealed and another law gives the same or another agency substantially the same authority to adopt a rule, the rule remains in effect until the agency amends or repeals the rule. When a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is repealed as of the date the law is repealed.

When an executive order abolishes part or all of an agency and transfers a function of that agency to another agency, a rule concerning the transferred function remains in effect until the agency to which the function is transferred amends or repeals the rule. When an executive order abolishes part or all of an agency and does not transfer a function of that agency to another agency, a rule concerning a function abolished by the executive order is repealed as of the effective date of the executive order.

The Director of Fiscal Research of the General Assembly must notify the Codifier of Rules when a rule is repealed under this section. When notified of a rule repealed under this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina Administrative Code.

Part 3. Review by Commission.

§ 150B-21.8. Review of rule by Commission.

(a) Temporary Rule. – The Commission does not review a temporary rule.

(b) Permanent Rule. – An agency must submit a permanent rule adopted by it to the Commission before the rule can be included in the North Carolina Administrative Code. The Commission reviews a permanent rule in accordance with the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of a permanent rule.

(c) Scope. – When the Commission reviews an amendment to a rule, it may review the entire rule that is being amended. The procedure in G.S. 150B-21.12 applies when the Commission objects to a part of a rule that is within its scope of review but is not changed by a rule amendment.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 of this Article. The

Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. – The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month.

§ 150B-21.10. Commission action on permanent rule.

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

(1) Approve the rule, if the Commission determines that the rule meets the standards for review.

(2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.

(3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes.

§ 150B-21.11. Procedure when Commission approves permanent rule.

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval, deliver the approved rule to the Codifier of Rules, and include the text of the approved rule and a summary of the rule in its next report to the Joint Legislative Administrative Procedure Oversight Committee.

If the approved rule will increase or decrease expenditures or revenues of a unit of local government, the Commission must also notify the Governor of the Commission's approval of the rule and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule.

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. – When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. – An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. – When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

(d) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its action and must send a copy of the record of the Commission's review of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next report to that Committee. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

§ 150B-21.13. Procedure when Commission extends period for review of permanent rule.

When the Commission extends the period for review of a permanent rule, it must notify the agency that adopted the rule of the extension and the reason for the extension. After the Commission extends the period for review of a rule, it may call a public hearing on the rule. Within 70 days after extending the period for review of a rule, the Commission must decide whether to approve the rule, object to the rule, or call a public hearing on the rule.

§ 150B-21.14. Public hearing on a rule.

The Commission may call a public hearing on a rule when it extends the period for review of the rule. At the request of an agency, the Commission may call a public hearing on a rule that is not before it for review. Calling a public hearing on a rule not already before the Commission for review places the rule before the Commission for review. When the Commission

decides to call a public hearing on a rule, it must publish notice of the public hearing in the North Carolina Register.

After a public hearing on a rule, the Commission must approve the rule or object to the rule in accordance with the standards and procedures in this Part. The Commission must make its decision of whether to approve or object to the rule within 70 days after the public hearing.

§ 150B-21.15: Repealed by Session Laws 1995, c. 507, s. 27.8(i), effective December 1, 1995.

§ 150B-21.16. Report to Joint Legislative Administrative Procedure Oversight Committee.

The Commission must make monthly reports to the Joint Legislative Administrative Procedure Oversight Committee. The reports are due by the last day of the month. A report must include the rules approved by the Commission at its meeting held in the month in which the report is due and the rules the Commission returned to agencies during that month after the Commission objected to the rule. A report must include any other information requested by the Joint Legislative Administrative Procedure Oversight Committee. When the Commission sends a report to the Joint Legislative Administrative Procedure Oversight Committee, the Commission must send a copy of the report to the Codifier of Rules.

Part 4. Publication of Code and Register.

§ 150B-21.17. North Carolina Register.

(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.

(1a) Notices of rule-making proceedings, the text of proposed rules, and the text of permanent rules approved by the Commission.

(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.

(3) Executive orders of the Governor.

(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.

(5) Orders of the Tax Review Board issued under G.S. 105-241.2.

(6) Other information the Codifier determines to be helpful to the public.

(b) Form. – When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

§ 150B-21.18. North Carolina Administrative Code.

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules.

§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

(1) Cite the law under which the rule is adopted.

(2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.

(3) Be in the physical form specified by the Codifier of Rules.

(4) Have been approved by the Commission, if the rule is a permanent rule.

§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority. – After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.

(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.

(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.

(4) Rearrange definitions and lists.

(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.

(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of

Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(b) Effect. – Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published.

§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.

(a) State Bar. – The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 30 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. – Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule.

(c) Publication. – A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule submitted under this section in the same manner as other rules in the North Carolina Administrative Code.

§ 150B-21.22. Effect of inclusion in Code.

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate.

§ 150B-21.23. Rule publication manual.

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of rule-making proceedings and a notice of text in the North Carolina Register and for filing a rule in the North Carolina Administrative Code.

§ 150B-21.24. Free copies of Register and Code.

(a) Register. -- The Codifier of Rules must distribute copies of the North Carolina Register as soon after publication as practical, without charge, to the following:

(1) A person who receives a free copy of the North Carolina Administrative Code.

(2) Upon request, one copy to each member of the General Assembly.

(b) Code. – The Codifier of Rules must distribute copies of the North Carolina Administrative Code as soon after publication as practical, without charge, to the following:

(1) One copy to the board of commissioners of each county, to be placed at the county clerk of court's office or at another place selected by the board of commissioners.

(2) One copy to the Commission.

(3) One copy to the Clerk of the Supreme Court and to the Clerk of the Court of Appeals of North Carolina.

(4) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.

(5) One copy to the Administrative Office of the Courts.

(6) One copy to the Governor.

(7) Five copies to the Legislative Services Commission for the use of the General Assembly.

(8) Upon request, one copy to each State official or department to whom or to which copies of the appellate division reports are furnished under G.S. 7A-343.1.

(9) Five copies to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7.

§ 150B-21.25. Paid copies of Register and Code.

A person who is not entitled to a free copy of the North Carolina Administrative Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier of Rules. The Codifier must set separate fees for the North Carolina Register and the North Carolina Administrative Code in amounts that cover publication, copying, and mailing costs. All monies received under this section must be credited to the General Fund.

Part 5. Rules Affecting Local Governments.

§ 150B-21.26. Governor to conduct preliminary review of certain administrative rules.

(a) Preliminary Review. – At least 30 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the Governor for preliminary review:

(1) The text of the proposed rule change.

(2) A short explanation of the reason for the proposed change.

(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local

government and explaining how the amount was computed.

(b) Scope. -- The Governor's preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.

(2) Any unanticipated effects of the proposed change on local government budgets.

(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change.

§ 150B-21.27. Minimizing the effects of rules on local budgets.

In adopting permanent rules that would increase or decrease the expenditures or revenues of a unit of local government, the agency shall consider the timing for implementation of the proposed rule as part of the preparation of the fiscal note required by G.S. 150B-21.4(b). If the computation of costs in a fiscal note indicates that the proposed rule change will disrupt the budget process as set out in the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, the agency shall specify the effective date of the change as July 1 following the date the change would otherwise become effective under G.S. 150B-21.3.

150B-21.28. Role of the Office of State Budget and Management.

The Office of State Budget and Management shall:

(1) Compile an annual summary of the projected fiscal impact on units of local government of State administrative rules adopted during the preceding fiscal year.

(2) Compile from information provided by each agency schedules of anticipated rule actions for the upcoming fiscal year.

(3) Provide the Governor, the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities with a copy of the annual summary and schedules by no later than March 1 of each year.

Article 3.
Administrative Hearings.

§ 150B-22. Settlement; contested case.

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case."

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;

(3) Failed to use proper procedure;

(4) Acted arbitrarily or capriciously; or

(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.

(a1) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by

certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing.

§ 150B-23.1. Mediated settlement conferences.

(a) Purpose. – This section authorizes a mediation program in the Office of Administrative Hearings in which the chief administrative law judge may require the parties in a contested case to attend a prehearing settlement conference conducted by a mediator. The purpose of the program is to determine whether a system of mediated settlement conferences may make the operation of the Office of Administrative Hearings more efficient, less costly, and more satisfying to the parties.

(b) Definitions. – The following definitions apply in this section:

(1) Mediated settlement conference. – A conference ordered by the chief administrative law judge involving the parties to a contested case and conducted by a mediator prior to a contested case hearing.

(2) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a contested case but who does not make a decision on the merits of the contested case.

(c) Conference. – The chief administrative law judge may order a mediated settlement conference for all or any part of a contested case to which an administrative law judge is assigned to preside. All aspects of the mediated settlement conference shall be conducted insofar as possible in accordance with the rules adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(d) Attendance. -- The parties to a contested case in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the settlement conference unless excused by the presiding administrative law judge.

(e) Mediator. – The parties shall have the right to stipulate to a mediator. Upon the failure of the parties to agree within a time limit established by the presiding administrative law judge, a mediator shall be appointed by the presiding administrative law judge.

(f) Sanctions. – Upon failure of a party or a party's attorney to attend a mediated settlement conference ordered under this section, the presiding administrative law judge may impose any sanction authorized by G.S. 150B-33(b)(8) or (10).

(g) Standards. – Mediators authorized to conduct mediated settlement conferences under this section shall comply with the standards adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(h) Immunity. – A mediator acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.

(i) Costs. – Costs of a mediated settlement conference shall be paid one share by the petitioner, one share by the respondent, and an equal share by any intervenor, unless otherwise apportioned by the administrative law judge.

(j) Inadmissibility of Negotiations. – All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

(k) Right to Hearing. – Nothing in this section restricts the right to a contested case hearing.

§ 150B-24. Venue of hearing.

(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

§ 150B-25. Conduct of hearing; answer.

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the administrative law judge may proceed with the hearing in the absence of the party.

(b) Repealed by Session Laws 1991, c. 35, s. 2, effective October 1, 1991.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence.

§ 150B-26. Consolidation.

When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the Director of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

§ 150B-27. Subpoena.

After the commencement of a contested case, subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. In addition to the methods of service in G.S. 1A-1, Rule 45, a State law enforcement officer may serve a subpoena on behalf of an agency that is a party to the contested case by any method by which a sheriff may serve a subpoena under that Rule. Upon a motion, the administrative law judge may quash a subpoena if, upon a hearing, the administrative law judge finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed.

Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-28. Depositions and discovery.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party.

§ 150B-29. Rules of evidence.

(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

§ 150B-30. Official notice.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

§ 150B-31. Stipulations.

(a) The parties in a contested case may, by a stipulation in writing filed with the administrative law judge, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

§ 150B-32. Designation of administrative law judge.

(a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.

(a1) Repealed by Session Laws 1985 (Reg. Session 1986), c. 1022, s. 1(15), effective July 15, 1986.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of an administrative law judge, the administrative law judge shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When an administrative law judge is disqualified or it is impracticable for him to continue the hearing, the Director shall assign another administrative law judge to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice.

§ 150B-33. Powers of administrative law judge.

(a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation

or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;

(3) Provide for the taking of testimony by deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;

(3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules.

§ 150B-34. Recommended decision or order of administrative law judge.

(a) Except as provided in G.S. 150B-36(c), in each contested case the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law.

(b) Repealed by Session Laws 1991, c. 35, s. 6, effective October 1, 1991.

§ 150B-35. No ex parte communication; exceptions.

Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

§ 150B-36. Final decision.

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision recommended by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the administrative law judge's recommended decision as its final decision, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.

(2) An order entered pursuant to the authority in G.S. 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

§ 150B-37. Official record.

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25, effective August 14, 1987.

(6) The administrative law judge's recommended decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the recommended decision to each party.

Article 3A.
Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

(a) The provisions of this Article shall apply to the following agencies:

(1) Occupational licensing agencies;

(2) The State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and

(3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

§ 150B-39. Depositions; discovery; subpoenas.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) In preparation for, or in the conduct of, a contested case subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the agency may quash a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of

the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and

(6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case under this Article. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case.

The provisions of this Article, rather than the [illegible] Article 3, shall govern a contested case in which the [illegible] requests an administrative law judge from the Office of Administrative Hearings.

The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.

§ 150B-41. Evidence; stipulations; official notice.

(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest

practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

§ 150B-42. Final agency decision; official record.

(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
(5) Proposed findings and exceptions; and
(6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

Article 4.
Judicial Review.

§ 150B-43. Right to judicial review.

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge.

§ 150B-45. Procedure for seeking review; waiver.

To obtain judicial review of a final decision under this Article, the person seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the person resides.

The person seeking review must file the petition within 30 days after the person is served with a written copy of the decision. A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

§ 150B-46. Contents of petition; copies served on all parties; intervention.

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding is a party to the review proceedings unless the party withdraws by notifying the court of the withdrawal and serving the other parties with notice of the withdrawal. Other parties to the proceeding may file a response to the petition within 30 days of service. Parties, including agencies, may state exceptions to the decision or procedure and what relief is sought in the response.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

§ 150B-48. Stay of decision.

At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

§ 150B-49. New evidence.

An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a recommended decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a recommended decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and recommended decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a recommended decision or final decision shall be made part of the official record.

§ 150B-50. Review by superior court without jury.

The review by a superior court of agency decisions under this Chapter shall be conducted by the court without a jury.

§ 150B-51. Scope of review.

(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the ... remand the case to the agency to enter a decision in acco... with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary or capricious.

§ 150B-52. Appeal; stay of court's decision.

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate.

§§ 150B-53 through 150B-57: Reserved for future codification purposes.

Article 5.
Publication of Administrative Rules.

§§ 150B-58 through 150B-64: Repealed by Session Laws 1991, c. 418, s. 5, effective October 1, 1991.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, June 02, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1)**143** Handicapped Parking Fines
Sequential Referral: None
Recommended Referral: None

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

S.B. **881** Campaign Reform Act of 1999
Draft Number: PCS 1749
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

H.B.(CS #1)**248** Precinct Boundaries
Draft Number: PCS 8140
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign

(1)

VISITOR REGISTRATION SHEET

Judiciary I 6-1-99
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Gallagher	H-S
George Reed	NC Council of Churches
Carol Love	Common Cause of N. Carolina
Bob Hall	Democracy South
[illegible] Holleday	DHHS
Paul Wilms	NCHBA
[illegible]	NCCA
Jerome Fuller	Attorney NCCA
Rusty Tyson	NCCA
Teresa Savarino	NC Center for Public Policy Research (S W Haight)
Hayden Childs	Common Sense Foundation
Susan Valdivia	Nationwide
Matt Osborne	AOC
Deborah Ross	ACLU
Christopher City	ACLU
Alan Mills	Bailey & Dixon LLP

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Anna Griffin	Charlotte Observer
Susan Nichols	NC Dep't of Justice
Gary O. Bartlett	SBoE
Jim B. [illegible]	SBoE
Johnnie McLean	SBE
Melissa Lovell	DOJ
Gaston Payne	Governor's Office
Ed Lege	N.C. Assoc. of Co. Comm
John Bawkish	Zeb Alley P.A.
[illegible] Jo Bain	NC Medical Society
Mari [illegible]	NCSA
Kelli Kukura	DuPont
J Bentley	Bentley & Assoc. Inc.
[illegible] McBride	NCAB
Ken D Howell	Gov's Office

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bevacqua	NCCBT

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 3, 1999

The Senate Judiciary I Committee met on June 3, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and brought to the Committee **Senate Bill 1149 – 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, AND TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BANKERS AND LENDERS.**

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 1149 for discussion. The motion carried by a majority voice vote.

Alan Hirsch, with the Attorney General's office, was recognized to give an overview of the Proposed Committee Substitute.

Jim Creekman, with First Citizens Bank and technical advisor for the bill, was recognized to answer questions from the Committee.

Due to time constraints, Senator Cooper asked that the bill be brought back to the Committee at a future date.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: **Thursday, June 3, 1999**
TIME: **10:00 a.m.**
ROOM: **1027**

The following bills or resolutions will be considered:

SB 1149 **Prohibit Predatory Lending** **Cooper**

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 3, 1999

SB 1149 Prohibit Predatory Lending Cooper

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1149
Proposed Committee Substitute
S1149-CSRO-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

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 COUNSELLING 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 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 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 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 (.25%) 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 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(.25%) 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)~~ subdivisions (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. The lender may charge deferral fees as may be agreed upon by parties to defer the

payment of all or part of one or more unpaid installments. If the home loan is of a type described in subdivision (b)(1) of this section, the deferral fees shall be subject to the following limitations:

(1) Deferral fees may be charged only pursuant to a written 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.

(2) Deferral fees may not exceed the greater of:

a. Five percent (5%) of each installment (or part thereof) deferred, multiplied by the number of months in the deferral period (the period in which no payment is required or made by reason of the deferral as measured from the date on which the deferred installment (or part thereof) would otherwise have been payable to the date the next installment (or part thereof) is payable under the terms of the deferral agreement), or

b. Fifty dollars ($50.00) multiplied by the number of months in the deferral period (the period in which no payment is required or made by reason of the deferral as measured from the date on which the deferred installment (or part thereof) would otherwise have been payable to the date the next installment (or part thereof) is payable under the terms of the deferral agreement).

(3) If a deferral fee has once been imposed with respect to a particular installment (or part thereof), no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.

(4) 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.

(5) 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 extend 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 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 from which the loan's 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 or 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 described in subsection (b) 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 (other than amounts held for future payment of taxes) unless the charge is reasonable, the lender receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the lender;

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. above; and

d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

(b) Thresholds. A loan will not be considered a high cost home loan unless:

(1) 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 USC 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including Sction 226.32 of Title 12 of the Code of Federal Regulations, as the same my be amended from time to time; or

(2) The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the principal amount of the loan if the loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the principal amount of the loan or one thousand dollars ($1,000), if the 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:

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 from which the loan's 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 or 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 described in subsection (b) 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 (other than amounts held for future payment of taxes) unless the charge is reasonable, the lender receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the lender;

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. above; and

d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

(b) Thresholds. A loan will not be considered a high cost home loan unless:

(1) 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 USC 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including Sction 226.32 of Title 12 of the Code of Federal Regulations, as the same my be amended from time to time; or

(2) The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the principal amount of the loan if the loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the principal amount of the loan or one thousand dollars ($1,000), if the 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:

a. 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;

b. 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 committment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

c. 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 prepared, 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

(3) 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.

(c) 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.

(d) 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 loan without first receiving certification from a home-ownership counselor approved by the Department of Housing and Urban Development 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, co-signer, 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;

c. Any single premium insurance other than insurance premiums for fire, casualty, title, liability, flood or private mortgage insurance related to the loan transaction; provided that insurance premiums calculated and paid on a monthly, quarterly, annual or other regular, periodic basis shall not be considered financed as part of the loan transaction; or

d. 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.

(e) Unfair and deceptive acts or practices. Except as provided in subsections (f) and (g) of this section the making of a high cost home loan which violates any provision of subsection (c) or (d) 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.

(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, Chapter 25A, 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. Restrictions on consumer 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) It shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any single premium insurance other than insurance premiums for fire, casualty, title, flood, liability, or private mortgage insurance related to the loan transaction; provided, that insurance premiums calculated and paid on a monthly, quarterly, annual or other regular, periodic basis shall not be considered financed as part of the loan transaction.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of making a consumer home loan to a borrower which refinances an existing consumer home loan unless the new loan has reasonable, tangible net benefit to the borrower considering all of the circumstances, including but not limited to, 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(b).

(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 a reasonable attorney fee to the attorney representing the prevailing party, such attorney fee 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."

Section 6. There is appropriated from the General Fund to the Office of Commissioner of Banks, the sum of one hundred thousand dollars ($100,000) for the 1999-2000 fiscal year to develop and implement, in consultation with the Attorney General, a program of public education and counselling, 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 7. This act becomes effective July 1, 2000, and applies to loans made or entered into on or after that date.

SENATE BILL 1149:
Prohibit Predatory Lending.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Cooper
Date:	June 3, 1999	**Summary by:**	Karen Cochrane Brown
Version:	S1149-CSRO-002		Staff Attorney

SUMMARY:

The proposed committee substitute for Senate Bill 1149 modifies permissible fees, which 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 appropriates $100,000 to the Office of Commissioner of Banks to develop and implement, in consultation with the Attorney General, a program of public education and counseling about predatory lenders.

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;

- Prohibiting prepayment penalties on consumer home loans up to $300,000. Currently, the limit is $100,000 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.

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, single premium insurance, other than for fire, casualty, title, flood, liability, or private mortgage insurance.

- The practice of "flipping" which is making a loan to a borrower, which 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.

Section 6 appropriates $100,000 to the Commissioner of Banks to develop and implement a program of public education and counseling about predatory lending.

Section 7 makes the act effective July 1, 2000, and applicable to loans made or entered into on or after that date.

Thursday, June 03, 1999

NORTH CAROLINA
NCCC
CONSUMERS COUNCIL

Senate Bill 1149

North Carolina Consumers Council, Inc.
Post Office Box 3401
Chapel Hill, NC 27515-3401

www.rtpnet.org/~nccc

New Address (May 1999):
P.O. Box 10214
RALEIGH NC 27605-0214

North Carolina Consumers Council, Inc. wishes to go on record as favoring Senate Bill 1149, which is intended to protect consumers from some of the worst abuses currently allowed to sub-prime lenders.

It is no service to consumers to be led to believe that they can reduce the monthly outlay for debt service in exchange for mortgages on their homes --- and then find, within five years, that a balloon payment is due that they had not noticed in the fine print. Of course they do not have the cash for the balloon payment and must refinance or lose their home.

So they refinance, paying again the thousands of dollars of loan origination fees that they paid just a few years earlier --- and go deeper into debt --- at interest rates much above market rates available to the middle class, who don't have to refinance every few years.

Business practices that lead to these situations are credit peonage.

They are bad for consumers, who lose their homes. They are bad for the community, whose citizens are pressed deeper into debt. They are bad for the government, which must provide additional social services for households uprooted and torn apart by high debt. And they are not needed for business to make profits.

Accordingly, we join in the Coalition for Responsible Lending in seeking remedies through the regulations created by S 1149.

Remember, the consumer is the reason for business; it is not the other way round.

Sincerely yours,

Michael v. E. Rulison

Michael v.E. Rulison, Ph.D., President
dn4nccc@mindpring.com

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee

6/3/99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

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Jean Carroll	DOA-NCCFW
Nicole Kluporic	DOA-NCCFW
Denise Tucker	Independent
Joyce Baffi	Atty General's Office
Lynne Weaver	Atty General's Office
C. Robin Britt, Jr.	Self-Help Credit Union
Maggie J. Taulcm	NC Human Relations Commission
Brent Ashton	Bank One Financial Services
Larry Heckner	Household Financial Group.
Rodney W. Lamm, Jr.	Commercial Credit Corp.
Melinda Lawrence	Pattison Hartley & Lawrence
Mike Calhoun	Self-Help
Shelly Adams	NC Fair Housing Center

VISITOR REGISTRATION SHEET

Name of Committee | Date

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Tom Duncan	WCSR
Joel Welch	Sen. Lee
David Beck	Coalition for Responsible Lending - Self-Help
Lanier Blum	Self-Help Credit Union
Theresa Stanion	AARP
Anna Haac	NC Equity Intern
Stephanie Newbold	NC Equity Intern
Brenda Summers	NC Equity
Jenni Lattimore	NC Credit Union Division
Pat Schlitz	NC Credit Union Network
Roy D. Hyatt	N.C. Local Gov't Credit Unions
Larry Hanna	NC Credit Union League
Mary N. Brown	Durham Habitat for Humanity - 215 N. Church St. Durham NC 27701
Stephanie Manson	NC Assoc. of Realtors

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Jeer Cumbow	Wachovia
Eve Stewart	UNC-CH
Fred Broadwell	Self Help Credit Union
Bethany Chaney	NC Minority Support Center
Anthony Young	Attorney General's office → Citizens Utilities Div.
Andy Sandlo	WCSR
[illegible]	[illegible]
Sandy Sands	WCSR
Sharon K. Draper	NC Housing Finance Agency
Margaret Mathena	NC Housing Finance Agency
Julia White	Progress office
Nicia Gregory	Poyner & Spruill
[illegible]	[illegible]
Patricia Yancey	LLPP

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JT
Name of Committee

6-3-99
Date

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FRED TAYLOR	WRAL-TV
Lynn Bonner	N&O
Scott Mooneyham	AP
Bonnard Allen	SOS
Alan Miles	Baker & Dixon LLP
Martin Eades	CRL
DON HUBART	AGO
Randy Chambers	CRL
Polly Guthrie	CRL
SUSAN LUPTON	CRL COALITION FOR RESPONSIBLE LENDING
Andrew Holton	CRL
Jeanette Bradley	Community Reinvestment Assoc of NC
JOHN CRAWFORD	NCAHB
John McMillan	MFOS

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Bryan Beatty	DOJ
John Rainey	Poyner & Spruill
[illegible]	DHHS
[illegible] Moody	NRC
Nicole Burchett	Rayodale Lisseth
Jennifer Weaver	Rayodale Lisseth
Walter Pucci	Charlotte Chamber
David Simmons	ZDA, PA
Ellen Schloemer	Coalition for Responsible Lending
~~Roseleen M. Fox~~	~~Coalition for Responsible Lending~~
Joe McClees	McClees Consult
Hayes Hyman	NCAMB - Raleigh
[illegible]	First Citizens Bank
Paul Stock	NC Bankers Assn

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Name of Committee | Date

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James Andrews	NC State AFL-CIO
Mike Davis	NC Financial Services Assn - RMI
George Reed	NC Council of Churches (CRL)
Greg Kirkpatrick	Habitat for Humanity of Lake Co.
Jane Winn	NCCRC
Deborah Ross	ACLU
Peter Skillern	Community Reinvestment Association of North Carolina
ERATA McDOUGALD	NC Sen. Cit. Fed.
Bettina Roesler	Attorney General
David Kirkman	" "
Mike Okun	NC State AFL-CIO
Estherine Davis	ElectriCities of NC
Jim BLAINE	STATE EMPLOYEES CREDIT UNION

VISITOR REGISTRATION SHEET

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Ken Kinion	American General
Frank Gray	N.C. Manufactured Housing
Merrell Chestnutt	AG's Office
Phil Lehman	AGO
Jeff Allen	First Union
Roger Bone	Bone & Assoc
Bill Burfeind	CCIA
Guy Rohling	American Bankers Ins.

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 8, 1999

The Senate Judiciary I Committee met on June 8, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Cole to explain **House Bill 280 – AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.**

Senator Gulley moved to amend the bill on Page 7, Line 14. The amendment was held and not voted on.

Ruth Sappie, with the Department of Transportation, Carol Howard, Director of Vehicle Registration and Capt. Dave Moody, DOT Enforcement, were recognized to answer questions from the Committee.

After discussion, Senator Cooper asked that the bill be brought back to the Committee at a future date.

Senator Gulley was recognized to explain **Senate Bill 969 – AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH AND WELLNESS TRUST FUND FOR THE PURPOSE OF RECEIPT AND DISTRIBUTION OF TWENTY-FIVE PERCENT OF THE TOBACCO SETTLEMENT FUNDS IN THE SETTLEMENT RESERVE FUND ESTABLISHED UNDER G.S. 143-16.4 TO DEVELOP A COMPREHENSIVE COMMUNITY-BASED PLAN AND FUND PROGRAMS AND INITIATIVES FOR IMPROVING THE HEALTHY AND WELLNESS OF THE PEOPLE OF NORTH CAROLINA WITH A PRIORITY ON PREVENTING, REDUCING, AND REMEDYING THE HEALTH EFFECTS OF TOBACCO USE WITH AN EMPHASIS ON REDUCING YOUTH TOBACCO USE.**

The bill was discussed by the Committee but was not voted on at this meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, June 8, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 969	NC Health & Wellness Trust Fund	Gulley
HB 280	Motor Vehicle Tech. Amendments	Cole
HB 1169	Succession Technical Amendments	Thompson
HB 1202	Child Health Ins./Support Orders	Cansler

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 8, 1999

SB 969	NC Health & Wellness Trust Fund	Gulley
HB 280	Motor Vehicle Tech. Amendments	Cole
HB 924	Community Mediation Centers	Nesbitt
HB 1169	Succession Technical Amendments	Thompson
HB 1202	Child Health Ins./Support Orders	Cansler

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 280
Committee Substitute Favorable 4/12/99
Committee Substitute #2 Favorable 4/20/99
Fourth Edition Engrossed 4/23/99

Short Title: Motor Vehicle Tech. Amendments/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(4b) Crash. -- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

Section 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter."

Section 3. G.S. 20-4.01(33b) reads as rewritten:

"(33b) Reportable ~~Accident.~~ Crash. -- ~~An accident or collision~~ A crash involving a motor vehicle that results in ~~either~~ one or more of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3."

Section 4. G.S. 20-9(g)(1) reads as rewritten:

"(1) The Division may issue a license to any person who is afflicted with or suffering from a physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Until a license issued under this subdivision expires or is revoked, the license continues in force as long as the licensee presents to the Division ~~one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six-month intervals where in his opinion public safety demands.~~ a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety."

Section 5. G.S. 20-11(e) reads as rewritten:

"(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.~~ 9:30 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."

Section 6. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. -- A supervising driver ~~must~~ shall 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~~ shall be a licensed driver who has been licensed for at least five years. ~~A~~ At least one supervising driver ~~must~~ shall 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.~~"

Section 7. G.S. 20-16(d) reads as rewritten:

"(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was ~~suspended, as early as practical within not to exceed 30 days after receipt of such request. The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may be held in some other district, and such notice shall contain the provisions of this section printed thereon.~~ suspended. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately."

Section 8. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this

section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

Section 9. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

Section 10. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. -- Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, or who shall cover any number or sticker on a registration plate with any material that makes the number or sticker illegible, shall be guilty of a Class 2 misdemeanor."

Section 11. G.S. 20-63 is amended by adding a new subsection that reads:

"(i) Electronic Applications and Collections. -- The Division is authorized to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties."

Section 12. G.S. 20-78(b) reads as rewritten:

"(b) The Division shall maintain a record of certificates of title ~~issued, maintaining at all times the records of the last two owners.~~ issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted."

Section 14. G.S. 20-79.4(b)(27) reads as rewritten:

"(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. ~~The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.~~"

Section 15. G.S. 20-87(2) reads as rewritten:

"(2) U-Drive-It Passenger Vehicles. -- U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

~~Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.~~

Automobiles:	15 or fewer passengers	$41.00
Buses:	16 or more passengers	$ 1.40 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00".

Section 16. G.S. 20-96 reads as rewritten:

"**§ 20-96. ~~Collection of delinquent penalties and taxes.~~ Detaining property-hauling vehicles until penalties and taxes are collected.**

~~A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:~~

~~(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.~~

~~(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.~~

~~The officer may detain the vehicle until the delinquent penalties and taxes are paid.~~

(a) Authority to Detain Vehicles. -- A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. -- When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State ~~is~~ shall not be liable for damage to the vehicle or loss of the property being hauled."

Section 17. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division ~~must~~ shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports ~~must~~ shall be made ~~on the forms provided.~~ in a format approved by the Commissioner. ~~The forms must ask for the~~ The following information shall be included about a reportable ~~accident:~~ crash:

(1) The cause of the ~~accident.~~ crash.

(2) The conditions existing at the time of the ~~accident.~~ crash.

(3) The persons and vehicles involved.

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 18. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of ~~such termination;~~ the termination within 10 business days; provided, no cancellation notice is required if the same insurer issues a ~~new~~ replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The insurer shall notify the Division of any new policy for insurance within 10 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any insurance company with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other insurance companies may submit the notices required under this section by either paper or electronic means.

The Division, upon receiving notice of ~~cancellation or termination of an owner's financial responsibility as required by this Article,~~ a lapse in insurance coverage, shall notify ~~such~~ the owner of ~~such cancellation or termination,~~ the lapse in coverage, and ~~such~~ the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle ~~accident~~ crash during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a

condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Section 19. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts ~~170 through 190,~~ 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. -- Commerce between any of the following:

a. A place in the United States and a place in a foreign country.

b. Places in the United States through any foreign country.

(3) Interstate commerce. -- As defined in 49 C.F.R. Part 390.5.~~Commerce between any of the following:~~

~~a. A place in a state and a place in another state.~~

~~b. Places in the same state through another state.~~

(4) Intrastate commerce. -- As defined in 49 C.F.R. Part 390.5.~~Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce.~~"

Section 20. G.S. 20-381(b) reads as rewritten:

"(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. ~~Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR.~~ The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 21. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products transported from a farm to first market.
c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.
d. Livestock or poultry transported from their point of origin to first market.
e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.
f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms ~~"recyclable"~~ "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).
g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.
h. Treated sludge collected from a wastewater treatment facility.
i. Apples when transported from the orchard to the first processing or packing point.
j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point."

Section 22. The Division of Motor Vehicles shall develop a plan to improve the system of collecting and maintaining proof of financial responsibility for newly licensed drivers classified as inexperienced operators. The Division shall submit its report to the Joint Legislative Transportation Oversight Committee by December 1, 1999.

Section 22.1. G.S. 20-183.8(b) reads as rewritten:

"(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(5) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to an emissions inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 10 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued."

Section 23. Sections 5 and 6 of this act become effective July 1, 1999. Section 18 of this act becomes effective October 1, 2000. The remainder of this act becomes effective October 1, 1999.

HOUSE BILL 280:
Motor Vehicle Technical Amendments/AB

BILL ANALYSIS

Committee:	Senate JI	**Introduced by:**	Rep. Cole
Date:	June 8, 1999	**Summary by:**	Jo B. McCants
Version:	4th Edition		Committee Co-Counsel

SUMMARY: ***The Committee Substitute for House Bill 280 makes several changes to the motor vehicle laws. Except for sections 5, 6, 12, and 17, this act becomes effective October 1, 1999.***

BILL ANALYSIS: House Bill 280 makes the following changes to the motor vehicle laws:

- Section 1 adds a definition for the term "crash" to Chapter 20. Sections 3 and 17 delete the term "accident" and substitute it with the newly defined term "crash".
- Sections 2, 19, and 20 make changes in the North Carolina law so that it will be consistent with the federal safety regulations governing the operation of commercial vehicles. Section 2 amends the definition of "Gross Vehicle Weight Rating" to allow DMV enforcement officers to use the license weight or total weight of a structurally altered vehicle when enforcing motor carrier safety regulations, and when determining if the driver requires a CDL. Sections 18 and 19 cross-reference definitions in the federal law.
- Section 4 authorizes DMV to require a disabled person with a drivers license to present a medical certificate at an interval deemed appropriate by the Division, instead of every year, as required under current law.
- Section 5 extends the time a Level 2 driver may drive unsupervised from 9:00 p.m. to 9:30 p.m. This section becomes effective July 1, 1999.
- Section 6 allows a Level 1 and Level 2 driver under the graduated drivers license system to have more than two supervising drivers and it requires only one of the supervising drivers to sign the driver's application for a permit or license. A supervising driver must still be a licensed driver who has been licensed for at least five years and the supervising driver must be a parent or guardian of the driver or a responsible person approved by the parent, guardian, or Division. This section becomes effective July 1, 1999.
- Section 7 requires DMV to offer a hearing within 60 days to a person whose license is suspended without a preliminary hearing. Under current law, the hearing must be held within 30 days. DMV notifies a driver before it suspends the driver's license. The driver may request a preliminary hearing. If the driver does not request a preliminary hearing, the suspension goes into effect on the given day. At that point, the driver may request a hearing if one has not already been held. With the increase in the number of post-suspension hearings requested, DMV needs more time for the department's 22 hearing officers to prepare for and schedule hearings.

- Section 7 also removes the requirement that the hearing be held in the county in which the licensee resides. DMV requests this change to help with scheduling the hearings that must be conducted. The change does not affect the "refusal" hearings under G.S. 20-16.2 for refusing to consent to a chemical analysis. These hearings will continue to be scheduled in the county in which the licensee resides.
- Sections 8 and 9 correct an incorrect statutory reference.
- Section 10 prohibits covering numbers and stickers on license plates with any material that makes the number or sticker illegible. A violation of this offense would be punishable as a Class 2 misdemeanor.
- Section 11 allows DMV to accept electronic applications for registration plates; registration certificates, and certificates of title and to collect fees and penalties electronically. Processing transactions and collecting fees electronically may allow the Division to offer customers additional service options. DMV currently has a pilot program to allow automobile dealers to enter information for DMV through a third party service provider. The pilot program is working well with one dealer and the Division plans to expand the pilot to nine other dealers in the next few weeks. Lending institutions have also indicated that they are ready to process liens electronically.
- Section 12 requires DMV to maintain title records for 20 years. After 20 years, DMV would only be required to maintain a record of the last two owners. Under current law, title records are maintained for the life of a vehicle. The cost of storing of these records is high. According to DMV, less than 2% of the inquiries received are for vehicles over 15 years old, the 20-year retention schedule should be adequate to address the publics needs.
- Section 14 removes the requirement that the Division must receive 300 applications for a military retiree plate before it can issue one. Section 15 changes the vehicle registration category for small daily rental trucks. Currently, small daily rental trucks are issued a "for-hire" plate. The cost of a "for-hire" plate is determined under G.S. 20-88 based upon its weight. The plate is required to be issued annually. A "for-hire" vehicle is also required to carry a higher insurance liability amount. Other daily rental vehicles are issued "u-drive-it plate" and are only required to have minimum insurance coverage. The cost of a "u-drive-it" plate for an automobile is $41.00. To standardize the treatment of daily rental cars and small trucks, this section establishes a "u-drive-it" category and fee schedule for small trucks that ranges from $41.50 to $61. As a "u-drive-it" vehicle, the registration plate costs would be higher; however, the insurance costs would be greatly reduced since the insurance classification for small daily rental trucks would change so they could be insured under a minimum liability policy.
- Section 16 authorizes a law enforcement officer to seize and detain property hauling vehicles that are found to be overweight until the penalties are paid and property hauling vehicles that do not have proper registration plates until the proper registration plates are obtained and the penalties are paid. Under current law, a law enforcement officer can seize and detain property-hauling vehicles owned by a person who owes any overweight penalties or unpaid motor fuels taxes or penalties until the taxes and penalties are paid. A law enforcement officer may also detain property hauling vehicles that are overweight until the overload is reduced. The clarifying changes in this section are requested by the Attorney General's office.
- Section 18 requires insurance companies to notify DMV when they terminate policies and issue new ones within 10 working days. Under current law, an insurer must notify DMV when it cancels a policy, but it does not notify DMV when it issues a policy. The section also provides that a company

does not have to notify DMV if the company is issuing a replacement policy. The changes in this section of the bill will hopefully reduce by 50% the number of vehicle owners contacted by DMV who have not experienced a lapse in coverage but have only "shopped around" for a lower premium.

- Section 18 also would require companies with $25,000,000 or more in annual vehicle insurance premium volume to submit the notifications electronically. This section becomes effective October 1, 2000.
- Section 21 replaces the term "recyclable" with the defined term "recyclable material".
- Section 22 requires DMV to develop a plan to improve the collection and maintenance of proof of financial responsibility for newly licensed drivers classified as inexperienced operators and to submit the plan to the Joint Legislative Transportation Oversight Committee by December 1, 1999.
- Section 22.1 adds as a new defense for an infraction. Allows a vehicle owner to establish in court as a defense that the owner's vehicle was inspected following the issuance of the citation and within 10 days of the expiration date of the inspection sticker.

Cindy Avrette contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 969

Short Title: N.C. Health and Wellness Trust Fund. (Public)

Sponsors: Senator Gulley.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH AND WELLNESS TRUST FUND FOR THE PURPOSE OF RECEIPT AND DISTRIBUTION OF TWENTY-FIVE PERCENT OF THE TOBACCO SETTLEMENT FUNDS IN THE SETTLEMENT RESERVE FUND ESTABLISHED UNDER G.S. 143-16.4 TO DEVELOP A COMPREHENSIVE COMMUNITY-BASED PLAN AND FUND PROGRAMS AND INITIATIVES FOR IMPROVING THE HEALTH AND WELLNESS OF THE PEOPLE OF NORTH CAROLINA WITH A PRIORITY ON PREVENTING, REDUCING, AND REMEDYING THE HEALTH EFFECTS OF TOBACCO USE WITH AN EMPHASIS ON REDUCING YOUTH TOBACCO USE.

Whereas, the State of North Carolina filed an action against Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (individually and successor by merger to The American Tobacco Company), Lorillard Tobacco Company, and Liggett Group, Inc., on December 21, 1998, entitled State of North Carolina v. Philip Morris Incorporated, Et Al., 98 CVS 14377; and

Whereas, the State of North Carolina entered into a Consent Decree and Final Judgment with the defendants to resolve the action in a manner that addresses the State's claims, while conserving the resources of the parties and the Court; and

Whereas, tobacco use is the leading preventable cause of premature death and disease among people of North Carolina; and

Whereas, tobacco related illness is the leading cause of death in our State, with an annual toll of 14,000 lives (twenty percent of all deaths) in North Carolina; and

Whereas, smoking rates among North Carolina youth have risen to a historic high of thirty-six percent (36%), climbing forty percent (40%) from 1991 through 1997; and

Whereas, racial/ethnic minorities and low-income people in our State bear a disproportionate burden of smoking-related diseases and conditions including heart disease, cancer, stroke, emphysema, chronic bronchitis, and asthma; and

Whereas, North Carolina ranks 40th among our 50 states in reported general health status (residents reporting their health to be "fair or poor"): 46th in nutrition, 45th in overweight adults, 42nd in adult immunizations, and our youth are 3-4 times more obese than children from other states in national rankings; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 147 of the General Statutes is amended by adding a new Article 6C to read:

"ARTICLE 6C.

"Health and Wellness Trust Fund.

"§ 147-86.30. Health and Wellness Trust Fund: established.

(a) Fund Established. -- There is established a North Carolina Health and Wellness Trust Fund in the State Treasurer's Office that shall be used to develop a comprehensive community-based plan and to finance programs and initiatives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and on reducing youth tobacco use.

(b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall by made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. -- Moneys from the Fund may be used for any of the following purposes:

(1) To fund programs and initiatives that include, but are not limited to, research, education, prevention and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.

(2) To develop a comprehensive, community-based plan to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use.

In all endeavors the Fund shall place priority on the needs of vulnerable and low-income populations and shall provide advice and technical support in addressing those needs.

(d) Limit on Operating and Administrative Expenses. -- No more than two percent (2%) of the annual balance of the Fund on July 1 may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"**§ 147-86.31. Health and Wellness Trust Fund: eligibility for grants.**

(a) Eligible Grant Applicants. -- Any of the following are eligible to apply for a grant from the Fund:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation which has a major purpose promoting public health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

"**§ 147-86.32. Health and Wellness Trust Fund: Board of Trustees established; membership qualifications; vacancies.**

(a) Board of Trustees Established. -- There is established the Health and Wellness Trust Fund Board of Trustees. The Health and Wellness Trust Fund Board of Trustees shall be independent, but for administrative purposes shall be located under the Department of Health and Human Services.

(b) Membership. -- The Health and Wellness Trust Fund Board of Trustees shall consist of 17 members as follow:

(1) Five appointed by the Governor.

(2) Five appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121; and

(3) Five appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

The Chair of the UNC School of Public Health and State Public Health Director will be ex officio, nonvoting members of the Board of Trustees.

The appointing authorities shall choose as trustees persons who are officers of, or affiliated with, nonprofit organizations, medical institutions, or governmental or law enforcement agencies, or individuals who are involved in the delivery of medical services, sale of products, which have a major purpose of promoting public health, reducing youth access, and reducing the health consequences of tobacco use.

(c) Initial Appointments. -- Each appointing authority shall designate two of the authority's initial appointments to serve one-year terms, two to serve two-year terms, and one to serve three-year terms. Thereafter, as the term of each trustee expires, that Trustee's successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of four years, each Trustee shall serve at the will of the appointing authority. The Governor shall appoint one Trustee to serve as Chair of the Board.

(d) Vacancies. -- Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term in accordance with G.S. 120-122.

(e) Frequency of Meetings. -- The Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(f) Per Diem and Expenses. -- The Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

"**§ 147-86.33. Health and Wellness Trust Fund: powers and duties.**

(a) Allocate Grant Funds. -- The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a program or initiative that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. -- The Trustees shall develop criteria for awarding grants under this Article. The criteria shall include types of programs and initiatives to be funded.

(c) Develop Evaluation Mechanism. -- The Trustees shall develop a mechanism with which to evaluate individual applications.

(d) Achievement of Federal Mandates. -- The Trustees shall award grants to assure that federal mandates targeting the reduction of youth access to tobacco products are achieved.

"**§ 147-86.34. Health and Wellness Trust Fund: reporting requirements.**

The Chair of the Board of Trustees shall report each year to the Joint Legislative Committee on Governmental Operations on its activities. Written reports shall also be sent on a regular basis to the Joint Legislative Committee on Governmental Operations.

"**§ 147-86.35. Health and Wellness Trust Fund: Open meeting and public records requirements.**

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Health and Wellness Trust Fund, and it shall be subject to audit by the State Auditor as provided by law."

Section 2. From the tobacco settlement funds in the Settlement Reserve Fund established under G.S. 143-16.4, the State Treasurer shall pay over to the Trust Fund twenty-five percent (25%) on a quarterly basis to be used to further the purposes of the Trust Fund.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 969
Proposed Committee Substitute S969-PCSRM-006
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
7-JUN-99 19:34:33

Short Title: N.C. Health and Wellness Trust Fund. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH AND WELLNESS TRUST FUND FOR THE PURPOSE OF RECEIPT AND DISTRIBUTION OF TWENTY-FIVE PERCENT OF THE TOBACCO SETTLEMENT FUNDS IN THE SETTLEMENT RESERVE FUND ESTABLISHED UNDER G.S. 143-16.4 TO DEVELOP A COMPREHENSIVE COMMUNITY-BASED PLAN AND FUND PROGRAMS AND INITIATIVES FOR IMPROVING THE HEALTH AND WELLNESS OF THE PEOPLE OF NORTH CAROLINA WITH A PRIORITY ON PREVENTING, REDUCING, AND REMEDYING THE HEALTH EFFECTS OF TOBACCO USE WITH AN EMPHASIS ON REDUCING YOUTH TOBACCO USE.

Whereas, the State of North Carolina filed an action against Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (individually and successor by merger to The American Tobacco Company), Lorillard Tobacco Company, and Liggett Group, Inc., on December 21, 1998, entitled State of North Carolina v. Philip Morris Incorporated, Et Al., 98 CVS 14377; and

Whereas, the State of North Carolina entered into a Consent Decree and Final Judgment with the defendants to resolve the action in a manner that addresses the State's claims, while conserving the resources of the parties and the court; and

Whereas, tobacco use is the leading preventable cause of premature death and disease among people of North Carolina; and other serious health challenges confront our people, including poor nutrition, low rates of immunizations, obesity and general health condition; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding the following new section to read:

"**§ 143-15.3D. Health and Wellness Trust Fund.**

(a) The Health and Wellness Trust Fund is established in G.S. 147-86.30. The State Controller shall allocate and reserve to the Fund fifty percent (50%) of the monies received in the Settlement Reserve Fund pursuant to G.S. 143-16.4 and the consent decree entered in the action of State of North Carolina v. Phillip Morris et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(b) The funds in the Health and Wellness Trust Fund shall be used only in accordance with Article 6C of Chapter 147 of the General Statutes.

(c) It is the intent of the General Assembly that the funds provided pursuant to Article 6C of Chapter 147 to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health programs."

Section 2. Chapter 147 of the General Statutes is amended by adding a new Article 6C to read:

"ARTICLE 6C.

"Health and Wellness Trust Fund.

"**§ 147-86.30. Health and Wellness Trust Fund: established.**

(a) Fund Established. -- There is established a North Carolina Health and Wellness Trust Fund in the State Treasurer's Office that shall be used to develop a comprehensive community-based plan and to finance programs and initiatives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and on reducing youth tobacco use.

(b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the

Chair of the Health and Wellness Trust Fund Board of Trustees. Except as provided in subsection (c) of this section, the Board of Trustees may expend only the investment earnings.

(c) Use of Fund Principal. The Board of Trustees shall reserve, and shall not expend, twenty-five percent (25%) of the Fund principal during years 2000 through 2025 to create and build the corpus of the Fund. The Board may expend the remaining seventy-five percent (75%) of the principal. Any unexpended principal that could have been expended under this subsection may be carried forward to subsequent years and may be expended during any of those years in addition to the amount of principal allowed to be expended under this subsection.

For the purposes of this subsection, "Principal" means the annual payment allocated to the Health Trust Fund Reserve Fund pursuant to G.S. 143-15.3D.

(d) Fund Purposes. -- Moneys from the Fund may be used for any of the following purposes:

(1) To fund programs and initiatives that include, but are not limited to, research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.

(2) To develop a comprehensive, community-based plan to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use.

In all endeavors the Fund shall place priority on the needs of vulnerable, underserved populations and shall provide advice and technical support in addressing those needs.

(e) Limit on Operating and Administrative Expenses. -- No more than one percent (1%) of the annual balance of the Fund on July 1 may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"§ 147-86.31. Health and Wellness Trust Fund: eligibility for grants.

Eligible Grant Applicants. -- Any of the following are eligible to apply for a grant from the Fund:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation which has a significant purpose promoting public health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

"§ 147-86.32. Health and Wellness Trust Fund: Board of Trustees established; membership qualifications; vacancies.

(a) Board of Trustees Established. -- There is established the Health and Wellness Trust Fund Board of Trustees. The Health and Wellness Trust Fund Board of Trustees shall exercise its powers independently, but for administrative purposes, the Board of Trustees shall be located within the State Treasurer's Office.

(b) Membership. -- The Health and Wellness Trust Fund Board of Trustees shall consist of 17 members as follows:

(1) Five appointed by the Governor.

(2) Five appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121; and

(3) Five appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

The Chair of the UNC School of Public Health and State Health Director will be ex officio, nonvoting members of the Board of Trustees.

The appointing authorities shall choose as trustees persons who are officers, employees, or persons affiliated with, nonprofit organizations, medical institutions, organizations involved in the delivery of health care services or products, governmental or law enforcement agencies, or individuals who are involved in the delivery of medical services or sale of products which have a major purpose of promoting public health, reducing youth access to tobacco products, and reducing the health consequences of tobacco use.

(c) Initial Appointments. -- Each appointing authority shall designate two of the authority's initial appointments to serve one-year terms, two to serve two-year terms, and one to serve a three-year term. Thereafter, as the term of each trustee expires, that trustee's successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of four years, each trustee shall serve at the will of the appointing authority. The Governor shall appoint one trustee to serve as Chair of the Board.

(d) Vacancies. -- Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term in accordance with G.S. 120-122.

(e) Frequency of Meetings. -- The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the voting members.

(f) Meeting Facilities. -- The State Treasurer's Office shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair of the Board.

(g) Per Diem and Expenses. -- The Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the trustees shall be paid from the Fund.

"§ 147-86.33. Health and Wellness Trust Fund: powers and duties.

(a) Allocate Grant Funds. -- The Board of Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a program or initiative that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. -- The Board of Trustees shall develop criteria for awarding grants under this Article. The criteria shall include types of programs and initiatives to be funded.

(c) Develop Evaluation Mechanism. -- The Board of Trustees shall develop a mechanism with which to evaluate individual applications.

(d) Achievement of Federal Mandates. -- The Board of Trustees shall ensure that good faith efforts are made to achieve federal mandates targeting the reduction of youth access to tobacco products.

(e) Administration of the Trust Fund. -- The Board of Trustees is authorized to hire staff or contract for other expertise for the administration of the Trust Fund. All administrative expenses of the Board shall be paid from funds in the Trust Fund.

(f) Gifts and Grants. -- The Board of Trustees is authorized to accept gifts or grants from other sources.

"§ 147-86.34. Health and Wellness Trust Fund: reporting requirements.

The Chair of the Board of Trustees shall report each year to the Joint Legislative Committee on Governmental Operations on its activities. Written reports shall also be sent on a quarterly basis to the Joint Legislative Committee on Governmental Operations.

"§ 147-86.35. Health and Wellness Trust Fund: open meeting and public records requirements.

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Health and Wellness Trust Fund, and it shall be subject to audit by the State Auditor as provided by law."

Section 3. G.S. 150B-1(d) is amended by adding a new subdivision (8) to read:

"(8) The Health and Wellness Trust Fund Board of Trustees established pursuant to Article 6C of Chapter 147 of the General Statutes."

Section 4. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Health and Wellness Trust Fund Board of Trustees established pursuant to Article 6C of Chapter 147 of the General Statutes."

Section 5. G.S. 143-16.4 reads as rewritten:

"§ 143-16.4. Settlement Reserve Fund.

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. The State Controller shall allocate and reserve fifty percent (50%) of these funds to the Health and Wellness Trust Fund in accordance with G.S. 143-15.3D. All remaining funds ~~Funds~~ shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgement of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 969
Proposed Committee Substitute S969-PCSRM-006
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
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Short Title: N.C. Health and Wellness Trust Fund. (Public)

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April 15, 1999

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Whereas, the State of North Carolina filed an action against Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (individually and successor by merger to The American Tobacco Company), Lorillard Tobacco Company, and Liggett Group, Inc., on December 21, 1998, entitled State of North Carolina v. Philip Morris Incorporated, Et Al., 98 CVS 14377; and

Whereas, the State of North Carolina entered into a Consent Decree and Final Judgment with the defendants to resolve the action in a manner that addresses the State's claims, while conserving the resources of the parties and the court; and

Whereas, tobacco use is the leading preventable cause of premature death and disease among people of North Carolina; and other serious health challenges confront our people, including poor nutrition, low rates of immunizations, obesity and general health condition; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding the following new section to read:

"**§ 143-15.3D. Health and Wellness Trust Fund.**

(a) The Health and Wellness Trust Fund is established in G.S. 147-86.30. The State Controller shall allocate and reserve to the Fund fifty percent (50%) of the monies received in the Settlement Reserve Fund pursuant to G.S. 143-16.4 and the consent decree entered in the action of State of North Carolina v. Phillip Morris et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(b) The funds in the Health and Wellness Trust Fund shall be used only in accordance with Article 6C of Chapter 147 of the General Statutes.

(c) It is the intent of the General Assembly that the funds provided pursuant to Article 6C of Chapter 147 to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health programs."

Section 2. Chapter 147 of the General Statutes is amended by adding a new Article 6C to read:

"ARTICLE 6C.

"Health and Wellness Trust Fund.

"**§ 147-86.30. Health and Wellness Trust Fund: established.**

(a) Fund Established. -- There is established a North Carolina Health and Wellness Trust Fund in the State Treasurer's Office that shall be used to develop a comprehensive community-based plan and to finance programs and initiatives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and on reducing youth tobacco use.

(b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the

Chair of the Health and Wellness Trust Fund Board of Trustees. Except as provided in subsection (c) of this section, the Board of Trustees may expend only the investment earnings.

(c) Use of Fund Principal. The Board of Trustees shall reserve, and shall not expend, twenty-five percent (25%) of the Fund principal during years 2000 through 2025 to create and build the corpus of the Fund. The Board may expend the remaining seventy-five percent (75%) of the principal. Any unexpended principal that could have been expended under this subsection may be carried forward to subsequent years and may be expended during any of those years in addition to the amount of principal allowed to be expended under this subsection.

For the purposes of this subsection, "Principal" means the annual payment allocated to the Health Trust Fund Reserve Fund pursuant to G.S. 143-15.3D.

(d) Fund Purposes. -- Moneys from the Fund may be used for any of the following purposes:

(1) To fund programs and initiatives that include, but are not limited to, research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.

(2) To develop a comprehensive, community-based plan to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use.

In all endeavors the Fund shall place priority on the needs of vulnerable, underserved populations and shall provide advice and technical support in addressing those needs.

(e) Limit on Operating and Administrative Expenses. -- No more than one percent (1%) of the annual balance of the Fund on July 1 may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"**§ 147-86.31. Health and Wellness Trust Fund: eligibility for grants.**

Eligible Grant Applicants. -- Any of the following are eligible to apply for a grant from the Fund:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation which has a significant purpose promoting public health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

"§ 147-86.32. Health and Wellness Trust Fund: Board of Trustees established; membership qualifications; vacancies.

(a) Board of Trustees Established. -- There is established the Health and Wellness Trust Fund Board of Trustees. The Health and Wellness Trust Fund Board of Trustees shall exercise its powers independently, but for administrative purposes, the Board of Trustees shall be located within the State Treasurer's Office.

(b) Membership. -- The Health and Wellness Trust Fund Board of Trustees shall consist of 17 members as follows:

(1) Five appointed by the Governor.

(2) Five appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121; and

(3) Five appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

The Chair of the UNC School of Public Health and State Health Director will be ex officio, nonvoting members of the Board of Trustees.

The appointing authorities shall choose as trustees persons who are officers, employees, or persons affiliated with, nonprofit organizations, medical institutions, organizations involved in the delivery of health care services or products, governmental or law enforcement agencies, or individuals who are involved in the delivery of medical services or sale of products which have a major purpose of promoting public health, reducing youth access to tobacco products, and reducing the health consequences of tobacco use.

(c) Initial Appointments. -- Each appointing authority shall designate two of the authority's initial appointments to serve one-year terms, two to serve two-year terms, and one to serve a three-year term. Thereafter, as the term of each trustee expires, that trustee's successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of four years, each trustee shall serve at the will of the appointing authority. The Governor shall appoint one trustee to serve as Chair of the Board.

(d) Vacancies. -- Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term in accordance with G.S. 120-122.

(e) Frequency of Meetings. -- The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the voting members.

(f) Meeting Facilities. -- The State Treasurer's Office shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair of the Board.

(g) Per Diem and Expenses. -- The Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the trustees shall be paid from the Fund.

"§ 147-86.33. Health and Wellness Trust Fund: powers and duties.

(a) Allocate Grant Funds. -- The Board of Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a program or initiative that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. -- The Board of Trustees shall develop criteria for awarding grants under this Article. The criteria shall include types of programs and initiatives to be funded.

(c) Develop Evaluation Mechanism. -- The Board of Trustees shall develop a mechanism with which to evaluate individual applications.

(d) Achievement of Federal Mandates. -- The Board of Trustees shall ensure that good faith efforts are made to achieve federal mandates targeting the reduction of youth access to tobacco products.

(e) Administration of the Trust Fund. -- The Board of Trustees is authorized to hire staff or contract for other expertise for the administration of the Trust Fund. All administrative expenses of the Board shall be paid from funds in the Trust Fund.

(f) Gifts and Grants. -- The Board of Trustees is authorized to accept gifts or grants from other sources.

"§ 147-86.34. Health and Wellness Trust Fund: reporting requirements.

The Chair of the Board of Trustees shall report each year to the Joint Legislative Committee on Governmental Operations on its activities. Written reports shall also be sent on a quarterly basis to the Joint Legislative Committee on Governmental Operations.

"§ 147-86.35. Health and Wellness Trust Fund: open meeting and public records requirements.

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Health and Wellness Trust Fund, and it shall be subject to audit by the State Auditor as provided by law."

Section 3. G.S. 150B-1(d) is amended by adding a new subdivision (8) to read:

"(8) The Health and Wellness Trust Fund Board of Trustees established pursuant to Article 6C of Chapter 147 of the General Statutes."

Section 4. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Health and Wellness Trust Fund Board of Trustees established pursuant to Article 6C of Chapter 147 of the General Statutes."

Section 5. G.S. 143-16.4 reads as rewritten:

"**§ 143-16.4. Settlement Reserve Fund.**

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. The State Controller shall allocate and reserve fifty percent (50%) of these funds to the Health and Wellness Trust Fund in accordance with G.S. 143-15.3D. All remaining funds ~~Funds~~ shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgement of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund."

Section 6. This act is effective when it becomes law.

SENATE BILL 969:
N.C. Health and Wellness Trust Fund.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	June 8, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Com Sub S969-CSRM-006		

SUMMARY: ***Senate Bill 969 would establish the N.C. Health and Wellness Trust Fund to receive and distribute twenty-five percent of the tobacco settlement funds received by the State to be used to develop a comprehensive community-based plan for improving the health and wellness of North Carolina citizens with a priority on preventing, reducing, and remedying the health effects of tobacco use, and to reduce youth tobacco use, and to fund these programs.***

CURRENT LAW: Earlier this session, Senate Bill 6 was enacted as S.L. 1999-2 which approved the nonprofit corporation proposed in the tobacco settlement consent decree to administer one-half of the tobacco settlement funds to provide economic impact assistance to economically affected or tobacco-dependent communities. No other legislation has been enacted relative to the remaining funds to be received by the State from the tobacco settlement.

BILL ANALYSIS: Section 1 of Senate Bill 969 would establish the Health and Wellness Trust Fund and would provided that 25% of the tobacco settlement funds (50% of the remaining tobacco settlement funds) received by the State would be placed in this Fund.

Section 2 creates a new Article for the administration of the Fund.

G.S. 147-86.30 provides that the Fund will be invested by the State Treasurer and administered and disbursed by a Board of Trustees. Through 2025, the Board can expend all of the annual earnings and up to 75% of the principal balance of the Fund annually. After 2025 all the principal and earnings may be spent annually. The Fund can be used to fund 1) programs and initiatives for research, education, prevention, and treatment of health problems and to increase the capacity of communities to respond to public health needs, and 2) to develop a comprehensive, community-based plan to improve the health and wellness of citizens with a priority on preventing, reducing, and remedying the health effects of tobacco use and an emphasis on reducing youth tobacco use. Priority for funding is given to underserved areas. Administrative costs are capped at 1% of the annual July 1 Fund balance.

G.S. 147-86.31 specifies that State agencies, local governments, and nonprofit corporations with a significant purpose of promoting public health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use are eligible for grants from the Fund.

G.S. 147-86.32 provides for the establishment of the 17-member Fund Board of Trustees, five members to be appointed by the Governor, five members appointed by the General Assembly on the recommendation of the Speaker, and five members appointed by the General Assembly on the recommendation of the President Pro Tempore. The Chair of the UNC School of Public Health and the State Health Director serve as ex officio, non-voting members. Trustees are to be appointed from person

affiliated with nonprofit organizations, medical institutions, health care services or product delivery organizations, government or law enforcement agencies, or individuals involved in the delivery of medical services or sale of products promoting public health, reducing youth access to tobacco products, and reducing the health consequences of tobacco use. The terms of the initial appointees vary to create staggered terms. No quorum for the Board is specified in statute.

G.S. 147-86.33 authorizes the Board to disburse Fund assets by grants to qualified entities, based on grant criteria and evaluation processes established by the Board.

G.S. 147-86.34 requires quarterly written reports and an annual report by the Chair of the Board to GovOps.

G.S. 147-86.35 makes clear that the Fund is subject to the Open Meetings and Public Record laws and audit by the State Auditor.

Section 3 will exempt the Board from the rulemaking provisions of the Administrative Procedures Act. By virtue of this exemption the Board will not be required to publicly publish proposed rules prior to adoption, or receive public comments or hold public hearings on proposed rules prior to adoption. Rules adopted by the Board will not be subject to review by the Rules Review Commission nor presented to the General Assembly for legislative disapproval. Actions taken by the Board will be subject to the contested case and judicial review provisions of the Administrative Procedures Act.

Section 4 prohibits members of the General Assembly from serving on the Board.

Section 5 amends the statute governing the Settlement Reserve Fund into which the proceeds of tobacco settlement actions are to be paid, by directing that 50% of these funds are to be allocated to the Health and Wellness Trust Fund.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

(1)

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

6-8-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Robert Parker	Wkwy. Marine
Susan Crocker	DHHS
Chris Doyle	DHHS
Crystal Perry	DHHS
Brad Sneeden	DPI
Jan Pinney	AAA Carolinas
Paula L. Hoey	Covenant w/NC's Children
Stephanie Mason	NC Assoc. of Realtors
Kim Miller	DHHS/Public Health
Carol Howard	DOT / DMV
David Woody	DMV ENFORCEMENT
Jerry L. Edwards	DMV
Michael G. Bryant	DMV
Eugene Cole	DMV

(2)

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
VL McBride	NCTA
Roslyn Sewitt	NCCCC
Ron Levine	DHHS
Jordan Leigh	NCDAVD
Wanda Austin	Institute of Govt.
Chad Ford	Institute of Govt
Paul Penhartsen	Institute of Government
Betsy Kane	Institute of Govt.
Brenda Hummer	NC Equity
Crissy Porter	Bone & Associates
Adam Searing	NCAIAC
George Reed	NC Council of Churches
Marian Berman	Institute of Government
Lobbyist	The Capitol Group
[illegible]	American Heart Assoc

(3)

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	ACS
[signature]	AT&T, LLC
[signature]	Tri-Agency Council
[signature]	Tri Agency Council
BOB CAUDLE	D.A. (HALIFAX)
Bill Pittman	NCMC
[signature]	APAC
Eileen Sottile	Keystone / Northstar
[signature]	NNC-TV
[signature]	NC Medical Society
[signature]	CHIPA
[signature]	MFLC
[signature]	[illegible]
Rick RADDELMANN	Doctor of the Day
Andy Romanet	NCLM

VISITOR REGISTRATION SHEET

Name of Committee | Date

(4)

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Will Jay	AHFC
Hal Miller	NC ACCT
Peyton Maynard	SJR
Hugh Tilson	NCHA
Steve Wood	NCMS

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 10, 1999

The Senate Judiciary I Committee met on June 10, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Soles, Acting Chairman, called the meeting to order and recognized Senator Cooper to continue the explanation of the Proposed Committee Substitute to **Senate Bill 1149 – 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, AND TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS.**

Senator Lucas moved to adopt a new Proposed Committee Substitute to Senate Bill 1149. The motion carried by a majority voice vote.

Alan Hirsch, with the Attorney General's office, was recognized to explain the changes from the previous Proposed Committee Substitute adopted at the June 3, 1999 meeting.

Mr. Creekman, with First Citizens Bank, was recognized to answer questions from the Committee.

Peter Dahlberg, with American Life Insurance Company, was recognized to address the issue of financing insurance payments.

The following people were recognized to speak on the bill:

Mike Easley, N. C. Attorney General
Dick Carlton, N. C. Financial Services, Inc.
Roney Lamm, Senior Vice President of Commercial Credit Corp.
Martin Eakes, Self-Help Credit Union

Senator Clodfelter moved to give the Proposed Committee Substitute to Senate Bill 1149 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. R. C. Soles, Jr., Vice Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, June 10, 1999
TIME: 9:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 1149	Prohibit Predatory Lending	Cooper
HB 280	Motor Vehicle Tech. Amend.	Cole

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 10, 1999

SB 1149	Prohibit Predatory Lending	Cooper
HB 280	Motor Vehicle Tech. Amendments	Cole

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, June 16, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **1149** Prohibit Predatory Lending

Draft Number:	PCS 1753
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1149-CSRU-005
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1149
THIS IS A DRAFT 9-JUN-99 23:23:05
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 COUNSELLING 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 fifty thousand dollars ~~($100,000)~~ ($150,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(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 (.25%) 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

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 fifty thousand dollars ~~($100,000)~~ ($150,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(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 (.25%) 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(.25%) 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)~~ subdivisions (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 fifteen (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 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 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 or 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 section; and

d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

(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 USC 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 principal amount of the loan if the principal amount of the loan is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the principal amount of the loan or one thousand dollars ($1,000), if the principal amount of the loan 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.

(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, co-signer, 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 subsections (e) of this section, the making of a high cost home loan which violates any provisions of subsections (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) and (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

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(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 consumer 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(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 a reasonable attorney fee to the attorney representing the prevailing party, such attorney fee 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. There is appropriated from the General Fund to the Office of Commissioner of Banks, the sum of one hundred thousand dollars ($100,000) for the 1999-2000 fiscal year to develop and implement, in consultation with the Attorney General, a program of public education and counselling, 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 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.

THE CONSEQUENCES OF SB 1149

Interest, Fees, & Terms	Consumer Finance Affiliates	Registered Non-regulated Mortgage Lenders	Banks, Credit Unions, Insurance Companies, or state and federal agencies	Comments
Max. Interest Rates	15% or T bills +6% (currently 12%)	No limits	No limits	HCM trigger is >T-bill + 10 but does not limit
Points	1%	No limits	No limits	HCM trigger is >5% but does not limit
Fees on origination of loans	Only charges by third parties or taxes	1.Unlimited loan application, origination, and commitment fees; 2. Unlimited discount points for reducing the interest rate; 3.Assumption fees [G.S. 24.10(d)] 4. Third party charges or taxes 5. New fees of the greater, .25% or $150, for unspecified reasons or purposes; 6. New fees for the deferral of payments, greater of 5% of payment or $50 for each payment.	1.Unlimited loan application, origination, and commitment fees; 2. Unlimited discount points for reducing the interest rate; 3.Assumption fees [24.10(d)] 4. Third party charges or taxes 5. New fees of the greater, .25% or $150, for unspecified reasons or purposes; 6. New fees for the deferral of payments, greater of 5% of payment or $50 for each month; 7. Appraisal fees for services of an affiliate	
Fees on renewals or restructuring	Only third party fees and taxes	1. Unlimited discount points for reducing the interest rate; 2.Assumption fees [24.10(d)] 3. Third party charges or taxes 4. New fees of the greater, .25% or $150, for unspecified reasons or purposes; 5. New fees for the deferral of payments, greater of 5% or $50 for each month.	1. Unlimited discount points for reducing the interest rate; 2.Assumption fees [24.10(d) 3. Third party charges or taxes 4. New fees of the greater, .25% or $150, for unspecified reasons or purposes; 5. New fees for the deferral of payments, greater of 5% of payment or $50 for each month 6. Unlimited appraisal fees for services of an employee or affiliate.	
Balloon loans	Prohibited for all loans	Not limited	Not limited	HCM prohibited

Source: Substitute SB 1149, Endorsed by NC Bankers Association, NC Credit Union League, NC Alliance of Financial Institutions, NC Association of Mortgage Bankers

* Prepared by N.C. Financial Services Assn.

VISITOR REGISTRATION SHEET

Judiciary I — Name of Committee

6-10-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NC Bankers Assn.
Jim Lofton	NCAFI
Jennifer Ott	Coalition for Responsible Lending
Polly Guthrie	CRL
Easter Maynard	CRL
Randy Chambers	CRL
SUSAN LUPTON	CRL
Greg Kirkpatrick	CRL / Habitat for Humanity - Wake
Theresa Stanton	AARP
MARCIA MILLER.	SELF-HELP CREDIT UNION 112-N ELM ST #810 GREENSBORO NC 27401
John Parker	CRL + SHCU
Carol Howard	DOT / DMV
Michael E. Bryant	DMV
Eugene Eagles	DMV
J. L. Edwards	DMV

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
George Hardy	DMV Enforcement
Gordon Zeigler	DMV Enforcement.
Dave A Moody	DMV ENFORCEMENT
Robert B. Mayfield	Self-Help Credit Union
Roney Lamm, J.R.	Commercial Credit
Lori Ann Harris	NCFSA
[illegible]	WCSR/NCFSA
Keith A. Jones	AFCC
T Cavarello	NC Ctr Pub Pol Res.
[illegible]	First Citizens Bank
[illegible]	Capital Group
Jeanne Tedrow	Passage Home CDC Raleigh
Hayes Hyman	NCAMB
Doug Lassiter	McClees Consulting
Henri McClees	McClees Consulting

VISITOR REGISTRATION SHEET

JUDICIARY I Comm. — Name of Committee

6-10-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Alida Gregory	Poyner & Spruill
Ken Kinion	American General Finance
Bernard Allen	SOS
Jean Carroll	DOA - NCCFW
Christina Medlin	NC Equity
Michael Rubison	N.C. Consumers Council, Inc.
Cam Cover	BPM HC
George Reed	NC Council of Churches
Doug Duncan	NC Forestry Assn.
Julia White	Pro Tem's office
Gardner Payne	Governor's Office
Alan Reber	Raleigh Mennonite Church Raleigh NC
Zeb ALLEY	1st UNION
Alan Miller	Bailey & Dixon LLP
FRAN PRESTON	NCRMA

VISITOR REGISTRATION SHEET

Judiciary Comm. / ~~Senate Appropriations Subcommittee on DOT~~ — June 10, 1999 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas V. Barnett	NCCFTF
Cindy Ellen	NC Retail Merchants Assoc.
Dan Schlaic	NC Credit Union network
Kate Crawford	NAMB
Amy Fallbright	Hunton & Williams
Jerry Col	Coastal Federal Credit Union
Tom Mason	COASTAL FEDERAL CREDIT UNION
Tom Coley	NC CWA
[illegible]	NC CWA Council
Hal Mills	NC CWA Council
Ashley Westbrook	Governor's Office

VISITOR REGISTRATION SHEET

Judiciary I Comm. — 10
~~Senate Appropriations Subcommittee on DOT~~ — June ~~X~~ 1999 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ebonie Alexander	NCCDI PO Box 98148 Raleigh, NC 27624
Robin Britt, Jr	Self-Help, Inc.

Minutes
Senate Judiciary I Committee
June 15, 1999

The Senate Judiciary Committee met on June 15, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Sen. Hartsell, acting Chairman, called the meeting to order and recognized Representative Cole as sponsor of **House Bill 280 – AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.**

Senator Wellons moved to adopt a Proposed Committee Substitute for House Bill 280 for discussion. The motion carried by a majority voice vote.

Jo McCants was recognized to explain the changes in the Proposed Committee Substitute.

Ruth Sappie, with the Department of Transportation, was recognized to answer questions from the Committee.

Senator Lucas moved to give the Proposed Committee Substitute for House Bill 280 a favorable report and re-refer it to the Finance Committee. The motion carried by a majority voice vote.

Senator Dalton was recognized to explain **Senate Bill 873 – AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.**

Senator Wellons moved to amend the bill on Page 4, Line 44. The motion carried by a majority voice vote. (Amendment is attached.)

Ben Hines from Alexander County with the Association of Register of Deeds, was recognized to comment on the bill.

After further discussion, it was recommended that the bill be withdrawn from consideration by the Committee and brought back to a future meeting.

Representative Nesbitt was recognized to explain **House Bill 924 – AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS.**

Senator Carpenter moved to adopt a Proposed Committee Substitute for discussion. The motion carried by a majority voice vote.

Scott Bradley, Director of the N. C. Mediation Network, was recognized to comment on the bill.

Senator Ballantine moved to give the Proposed Committee Substitute for House Bill 924 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting was adjourned.

Sen. Fletcher Hartsell, Vice Chairman
Acting Chair

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, June 15, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

HB 280	Motor Vehicle Tech. Amend.	Cole
HB 924	Community Mediation Centers	Nesbitt
SB 873	Improve Registered Documents	Dalton
SB 969	Health & Wellness Trust Fund	Gulley

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 15, 1999

HB 280	Motor Vehicle Tech. Amend.	Cole
HB 924	Community Mediation Centers	Nesbitt
SB 873	Improve Registered Documents	Dalton
SB 969	Health & Wellness Trust Fund	Gulley

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 280
Committee Substitute Favorable 4/12/99
Committee Substitute #2 Favorable 4/20/99
Fourth Edition Engrossed 4/23/99

Short Title: Motor Vehicle Tech. Amendments/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(4b) Crash. -- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

Section 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter."

Section 3. G.S. 20-4.01(33b) reads as rewritten:

"(33b) Reportable ~~Accident.~~ Crash. -- ~~An accident or collision~~ A crash involving a motor vehicle that results in ~~either~~ one or more of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3."

Section 4. G.S. 20-9(g)(1) reads as rewritten:

"(1) The Division may issue a license to any person who is afflicted with or suffering from a physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Until a license issued under this subdivision expires or is revoked, the license continues in force as long as the licensee presents to the Division ~~one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six month intervals where in his opinion public safety demands.~~ a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety."

Section 5. G.S. 20-11(e) reads as rewritten:

"(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.~~ 9:30 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."

Section 6. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. -- A supervising driver ~~must~~ shall 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~~ shall be a licensed driver who has been licensed for at least five years. ~~A~~ At least one supervising driver ~~must~~ shall 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.~~"

Section 7. G.S. 20-16(d) reads as rewritten:

"(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was ~~suspended, as early as practical within not to exceed 30 days after receipt of such request. The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may be held in some other district, and such notice shall contain the provisions of this section printed thereon.~~ suspended. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately."

Section 8. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this

section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

Section 9. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

Section 10. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. -- Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, or who shall cover any number or sticker on a registration plate with any material that makes the number or sticker illegible, shall be guilty of a Class 2 misdemeanor."

Section 11. G.S. 20-63 is amended by adding a new subsection that reads:

"(i) Electronic Applications and Collections. -- The Division is authorized to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties."

Section 12. G.S. 20-78(b) reads as rewritten:

"(b) The Division shall maintain a record of certificates of title ~~issued, maintaining at all times the records of the last two owners.~~ issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted."

Section 14. G.S. 20-79.4(b)(27) reads as rewritten:

"(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. ~~The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.~~"

Section 15. G.S. 20-87(2) reads as rewritten:

"(2) U-Drive-It Passenger Vehicles. -- U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

~~Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.~~

Automobiles:	15 or fewer passengers	$41.00
Buses:	16 or more passengers	$ 1.40 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00".

Section 16. G.S. 20-96 reads as rewritten:

"**§ 20-96. ~~Collection of delinquent penalties and taxes.~~ Detaining property-hauling vehicles until penalties and taxes are collected.**

~~A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:~~

~~(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.~~

~~(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.~~

~~The officer may detain the vehicle until the delinquent penalties and taxes are paid.~~

(a) Authority to Detain Vehicles. -- A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. -- When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State ~~is~~ shall not be liable for damage to the vehicle or loss of the property being hauled."

Section 17. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division ~~must~~ shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports ~~must~~ shall be made ~~on the forms provided.~~ in a format approved by the Commissioner. ~~The forms must ask for the~~ The following information shall be included about a reportable ~~accident:~~ crash:

(1) The cause of the ~~accident.~~ crash.

(2) The conditions existing at the time of the ~~accident.~~ crash.

(3) The persons and vehicles involved.

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 18. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of ~~such termination;~~ the termination within 10 business days; provided, no cancellation notice is required if the same insurer issues a ~~new~~ replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The insurer shall notify the Division of any new policy for insurance within 10 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any insurance company with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other insurance companies may submit the notices required under this section by either paper or electronic means.

The Division, upon receiving notice of ~~cancellation or termination of an owner's financial responsibility as required by this Article,~~ a lapse in insurance coverage, shall notify ~~such~~ the owner of ~~such cancellation or termination,~~ the lapse in coverage, and ~~such~~ the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle ~~accident~~ crash during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a

condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Section 19. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts ~~170 through 190,~~ 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. -- Commerce between any of the following:

a. A place in the United States and a place in a foreign country.

b. Places in the United States through any foreign country.

(3) Interstate commerce. -- As defined in 49 C.F.R. Part 390.5.~~Commerce between any of the following:~~

~~a. A place in a state and a place in another state.~~

~~b. Places in the same state through another state.~~

(4) Intrastate commerce. -- As defined in 49 C.F.R. Part 390.5.~~Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce.~~"

Section 20. G.S. 20-381(b) reads as rewritten:

"(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. ~~Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR.~~ The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 21. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products transported from a farm to first market.
c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.
d. Livestock or poultry transported from their point of origin to first market.
e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.
f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms ~~"recyclable"~~ "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).
g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.
h. Treated sludge collected from a wastewater treatment facility.
i. Apples when transported from the orchard to the first processing or packing point.
j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point."

Section 22. The Division of Motor Vehicles shall develop a plan to improve the system of collecting and maintaining proof of financial responsibility for newly licensed drivers classified as inexperienced operators. The Division shall submit its report to the Joint Legislative Transportation Oversight Committee by December 1, 1999.

Section 22.1. G.S. 20-183.8(b) reads as rewritten:

"(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(5) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to an emissions inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 10 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued."

Section 23. Sections 5 and 6 of this act become effective July 1, 1999. Section 18 of this act becomes effective October 1, 2000. The remainder of this act becomes effective October 1, 1999.

HOUSE BILL 280:
Motor Vehicle Technical Amendments/AB

BILL ANALYSIS

Committee:	Senate JI	**Introduced by:**	Rep. Cole
Date:	June 8, 1999	**Summary by:**	Jo B. McCants
Version:	4th Edition		Committee Co-Counsel

SUMMARY: ***The Committee Substitute for House Bill 280 makes several changes to the motor vehicle laws. Except for sections 5, 6, 12, and 17, this act becomes effective October 1, 1999.***

BILL ANALYSIS: House Bill 280 makes the following changes to the motor vehicle laws:

- Section 1 adds a definition for the term "crash" to Chapter 20. Sections 3 and 17 delete the term "accident" and substitute it with the newly defined term "crash".
- Sections 2, 19, and 20 make changes in the North Carolina law so that it will be consistent with the federal safety regulations governing the operation of commercial vehicles. Section 2 amends the definition of "Gross Vehicle Weight Rating" to allow DMV enforcement officers to use the license weight or total weight of a structurally altered vehicle when enforcing motor carrier safety regulations, and when determining if the driver requires a CDL. Sections 18 and 19 cross-reference definitions in the federal law.
- Section 4 authorizes DMV to require a disabled person with a drivers license to present a medical certificate at an interval deemed appropriate by the Division, instead of every year, as required under current law.
- Section 5 extends the time a Level 2 driver may drive unsupervised from 9:00 p.m. to 9:30 p.m. This section becomes effective July 1, 1999.
- Section 6 allows a Level 1 and Level 2 driver under the graduated drivers license system to have more than two supervising drivers and it requires only one of the supervising drivers to sign the driver's application for a permit or license. A supervising driver must still be a licensed driver who has been licensed for at least five years and the supervising driver must be a parent or guardian of the driver or a responsible person approved by the parent, guardian, or Division. This section becomes effective July 1, 1999.
- Section 7 requires DMV to offer a hearing within 60 days to a person whose license is suspended without a preliminary hearing. Under current law, the hearing must be held within 30 days. DMV notifies a driver before it suspends the driver's license. The driver may request a preliminary hearing. If the driver does not request a preliminary hearing, the suspension goes into effect on the given day. At that point, the driver may request a hearing if one has not already been held. With the increase in the number of post-suspension hearings requested, DMV needs more time for the department's 22 hearing officers to prepare for and schedule hearings.

- Section 7 also removes the requirement that the hearing be held in the county in which the licensee resides. DMV requests this change to help with scheduling the hearings that must be conducted. The change does not affect the "refusal" hearings under G.S. 20-16.2 for refusing to consent to a chemical analysis. These hearings will continue to be scheduled in the county in which the licensee resides.
- Sections 8 and 9 correct an incorrect statutory reference.
- Section 10 prohibits covering numbers and stickers on license plates with any material that makes the number or sticker illegible. A violation of this offense would be punishable as a Class 2 misdemeanor.
- Section 11 allows DMV to accept electronic applications for registration plates; registration certificates, and certificates of title and to collect fees and penalties electronically. Processing transactions and collecting fees electronically may allow the Division to offer customers additional service options. DMV currently has a pilot program to allow automobile dealers to enter information for DMV through a third party service provider. The pilot program is working well with one dealer and the Division plans to expand the pilot to nine other dealers in the next few weeks. Lending institutions have also indicated that they are ready to process liens electronically.
- Section 12 requires DMV to maintain title records for 20 years. After 20 years, DMV would only be required to maintain a record of the last two owners. Under current law, title records are maintained for the life of a vehicle. The cost of storing of these records is high. According to DMV, less than 2% of the inquiries received are for vehicles over 15 years old, the 20-year retention schedule should be adequate to address the publics needs.
- Section 14 removes the requirement that the Division must receive 300 applications for a military retiree plate before it can issue one. Section 15 changes the vehicle registration category for small daily rental trucks. Currently, small daily rental trucks are issued a "for-hire" plate. The cost of a "for-hire" plate is determined under G.S. 20-88 based upon its weight. The plate is required to be issued annually. A "for-hire" vehicle is also required to carry a higher insurance liability amount. Other daily rental vehicles are issued "u-drive-it plate" and are only required to have minimum insurance coverage. The cost of a "u-drive-it" plate for an automobile is $41.00. To standardize the treatment of daily rental cars and small trucks, this section establishes a "u-drive-it" category and fee schedule for small trucks that ranges from $41.50 to $61. As a "u-drive-it" vehicle, the registration plate costs would be higher; however, the insurance costs would be greatly reduced since the insurance classification for small daily rental trucks would change so they could be insured under a minimum liability policy.
- Section 16 authorizes a law enforcement officer to seize and detain property hauling vehicles that are found to be overweight until the penalties are paid and property hauling vehicles that do not have proper registration plates until the proper registration plates are obtained and the penalties are paid. Under current law, a law enforcement officer can seize and detain property-hauling vehicles owned by a person who owes any overweight penalties or unpaid motor fuels taxes or penalties until the taxes and penalties are paid. A law enforcement officer may also detain property hauling vehicles that are overweight until the overload is reduced. The clarifying changes in this section are requested by the Attorney General's office.
- Section 18 requires insurance companies to notify DMV when they terminate policies and issue new ones within 10 working days. Under current law, an insurer must notify DMV when it cancels a policy, but it does not notify DMV when it issues a policy. The section also provides that a company

does not have to notify DMV if the company is issuing a replacement policy. The changes in this section of the bill will hopefully reduce by 50% the number of vehicle owners contacted by DMV who have not experienced a lapse in coverage but have only "shopped around" for a lower premium.

- Section 18 also would require companies with $25,000,000 or more in annual vehicle insurance premium volume to submit the notifications electronically. This section becomes effective October 1, 2000.
- Section 21 replaces the term "recyclable" with the defined term "recyclable material".
- Section 22 requires DMV to develop a plan to improve the collection and maintenance of proof of financial responsibility for newly licensed drivers classified as inexperienced operators and to submit the plan to the Joint Legislative Transportation Oversight Committee by December 1, 1999.
- Section 22.1 adds as a new defense for an infraction. Allows a vehicle owner to establish in court as a defense that the owner's vehicle was inspected following the issuance of the citation and within 10 days of the expiration date of the inspection sticker.

Cindy Avrette contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H280-PCSSE-010
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 280
THIS IS A DRAFT 9-JUN-99 17:29:47
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Motor Vehicle Tech. Amendments/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(4b) Crash. -- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

Section 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the

license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter."

Section 3. G.S. 20-4.01(33b) reads as rewritten:

"(33b) Reportable ~~Accident.~~ Crash. -- ~~An accident or collision~~ A crash involving a motor vehicle that results in ~~either~~ one or more of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3."

Section 4. G.S. 20-9(g)(1) reads as rewritten:

"(1) The Division may issue a license to any person who is afflicted with or suffering from a physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Until a license issued under this subdivision expires or is revoked, the license continues in force as long as the licensee presents to the Division ~~one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six-month intervals where in his opinion public safety demands.~~ a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety."

Section 5. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. -- A supervising driver ~~must~~ shall 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~~ shall be a licensed driver who has been licensed for at least five years. ~~A~~ At least one supervising driver ~~must~~ shall 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.~~"

Section 6. G.S. 20-16(d) reads as rewritten:

"(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was ~~suspended, as early as practical within not to exceed 30 days after receipt of such request. The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may be held in some other district, and such notice shall contain the provisions of this section printed thereon.~~ suspended. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately."

Section 7. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the

period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

Section 8. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

Section 9. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. -- Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any

bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall otherwise cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible, commits an infraction and shall be fined under G.S. 14-3.1."

Section 10. G.S. 20-63 is amended by adding a new subsection that reads:

"(i) Electronic Applications and Collections. -- The Division is authorized to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties."

Section 11. G.S. 20-78(b) reads as rewritten:

"(b) The Division shall maintain a record of certificates of title ~~issued, maintaining at all times the records of the last two owners.~~ issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted."

Section 12. G.S. 20-79.4(b)(27) reads as rewritten:

"(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. ~~The Division may not issue the plate authorized by this subdivision unless it~~

~~receives at least 300 applications for the plate.~~"

Section 13. G.S. 20-87(2) reads as rewritten:

"(2) U-Drive-It Passenger Vehicles. -- U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00
~~Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.~~		
Automobiles:	15 or fewer passengers	$41.00
Buses:	16 or more passengers	$ 1.40 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00".

Section 14. G.S. 20-96 reads as rewritten:

"§ 20-96. ~~Collection of delinquent penalties and taxes.~~ Detaining property-hauling vehicles until penalties and taxes are collected.

~~A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:~~

~~(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.~~

~~(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.~~

~~The officer may detain the vehicle until the delinquent penalties and taxes are paid.~~

(a) Authority to Detain Vehicles. -- A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. -- When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State ~~is~~ shall not be liable for damage to the vehicle or loss of the property being hauled."

Section 15. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division ~~must~~ shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports ~~must~~ shall be made ~~on the forms provided.~~ in a format approved by the Commissioner. ~~The forms must ask for the~~ The following information shall be included about a reportable ~~accident:~~ crash:

(1) The cause of the ~~accident.~~ crash.

(2) The conditions existing at the time of the ~~accident.~~ crash.

(3) The persons and vehicles involved.

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 16. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of ~~such termination;~~ the termination within 20 business days; provided, no cancellation notice is required if the same insurer issues a ~~new~~ replacement

insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The insurer shall notify the Division of any new policy for insurance within 20 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any insurance company with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other insurance companies may submit the notices required under this section by either paper or electronic means. The beginning date and termination date of insurance coverage provided to the division by the insurer pursuant to this paragraph shall constitute a designated trade secret under G.S. 132-1.2.

The Division, upon receiving notice of ~~cancellation or termination of an owner's financial responsibility as required by this Article,~~ a lapse in insurance coverage, shall notify ~~such~~ the owner of ~~such cancellation or termination,~~ the lapse in coverage, and ~~such~~ the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle ~~accident~~ crash during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or

depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Section 17. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts ~~170 through 190,~~ 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. -- Commerce between any of the following:

a. A place in the United States and a place in a foreign country.

b. Places in the United States through any foreign country.

(3) Interstate commerce. -- As defined in 49 C.F.R. Part 390.5.~~Commerce between any of the following:~~

~~a. A place in a state and a place in another state.~~

~~b. Places in the same state through another state.~~

(4) Intrastate commerce. -- As defined in 49 C.F.R. Part 390.5.~~Commerce that is between points and over a route wholly within this State and is not part of~~

~~a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce.~~"

Section 18. G.S. 20-381(b) reads as rewritten:

"(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. ~~Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR.~~ The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 19. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products transported from a farm to first market.

c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.

d. Livestock or poultry transported from their point of origin to first market.

e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.

f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms ~~"recyclable"~~ "recyclable material" and

"processing" have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

h. Treated sludge collected from a wastewater treatment facility.

i. Apples when transported from the orchard to the first processing or packing point.

j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point."

Section 20. The Division of Motor Vehicles shall develop a plan to improve the system of collecting and maintaining proof of financial responsibility for newly licensed drivers classified as inexperienced operators. The Division shall submit its report to the Joint Legislative Transportation Oversight Committee by December 1, 1999.

Section 21. G.S. 20-183.8(b) reads as rewritten:

"(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a

~~safety-only inspection,~~ safety inspection or an emissions inspection and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued."

Section 22. Section 5 of this act becomes effective July 1, 1999. Section 16 of this act becomes effective October 1, 2000. The remainder of this act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 873

Short Title: Improve Registered Documents. (Public)

Sponsors: Senators Dalton; Albertson, Hagan, Kerr, Lee, Miller, Phillips, Reeves, Soles, and Wellons.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-54.3(b) reads as rewritten:

"(b) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to all of the following aspects of land records management:

(1) Uniform indexing of land ~~records;~~ records.

(2) Uniform recording and indexing procedures for maps, plats and ~~condominiums; and~~ condominiums.

(3) Security and reproduction of land records.

(4) Uniform recording standards for land records."

Section 2. G.S. 147-54.3(b1) reads as rewritten:

"(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing and recording standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards

adopted shall be posted in the office of the register of deeds in each county of the State."

Section 3. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. -- For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be six dollars ($6.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00), for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. -- For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ten dollars ($10.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. -- For issuing a license forty dollars ($40.00); for issuing a delayed certificate with one certified copy five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy five dollars ($5.00).

(3) Plats. -- For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00).

(4) Right-of-Way Plans. -- For each original or amended plan and profile sheet recorded five dollars ($5.00). This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. -- For preparation of necessary papers when birth to be registered in another county five dollars ($5.00); for registration when necessary papers prepared in another county, with one certified copy five dollars ($5.00); for preparation of necessary papers and registration in the same county, with one certified copy ten dollars ($10.00).

(6) Amendment of Birth or Death Record. -- For preparation of amendment and affecting correction two dollars ($2.00).

(7) Legitimations. -- For preparation of all documents concerned with legitimations seven dollars ($7.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. -- For furnishing a certified copy of a death or birth certificate or marriage license three dollars ($3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(9) Certified Copies. -- For furnishing a certified copy of an instrument for which no other provision is made by this section three dollars ($3.00) for the first page, plus one dollar ($1.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. -- For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof two dollars ($2.00).

(11) Uncertified Copies. -- When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(12) Notarial Acts. -- For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. -- Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.
(14) Torrens Registration. -- Such fees as are provided in G.S. 43-5.
(15) Master Forms. -- Such fees as are provided for instruments in general.
(16) Probate. -- For certification of instruments for registration as provided in G.S. 47-14 two dollars ($2.00).
(17) Qualification of Notary Public. -- For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10A-8 five dollars ($5.00).
(18) Reinstatement of Articles of Incorporation. -- For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.
(19) Nonstandard Document. -- For registering a land records document not in compliance with the recording standards adopted pursuant to G.S. 147-54.3(b1) thirty dollars ($30.00), in addition to all other applicable recording fees."

Section 4. G.S. 161-14 reads as rewritten:

"**§ 161-14. Registration of instruments.**

(a) ~~The~~ After the register of deeds determines that all statutory requirements for registration have been met, the register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. He shall then proceed to register it on the day that it is presented unless a temporary index has been established.

(b) The register of deeds may, in his discretion, establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate in all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not later than 30 days after the date of presentation.

~~(b) All instruments presented for registration shall be on paper and in ink of a color, quality, size, and condition that will permit the production of legible and permanent reproductions thereof by photographic or microphotographic processes. If an instrument presented for registration is in a condition that will not permit such reproduction, the register of deeds shall endorse thereon the following notation: "Record of poor quality due to condition of original document." He shall then register the instrument in the usual manner.~~"

Section 5. This act is effective when it becomes law.

SENATE BILL 873:
Improve Registered Documents.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Dalton
Date:	April 27, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 873 would require the Secretary of State, in conjunction with the Register of Deeds Association and the Real Property Section of the NC Bar Association, to adopt uniform recording standards, directs the register of deeds to determine that the registration requirements are met before recording a document, and authorizes the register of deeds to charge an additional $30 for the recording of a document not in compliance with the statewide standards.***

CURRENT LAW: Current law requires the Secretary of State to establish minimum statewide standards for a uniform indexing system of land records and a uniform recording and indexing procedures for maps, plats, and condominiums by registers of deeds. Current law requires the register of deeds to record any document presented for registration and to note on the face of any document not suited for reproduction "Record of poor quality due to condition of original document.". The register of deeds is not authorized to charge fees except for the cost of registration and copies, and other specified services.

BILL ANALYSIS: Sections 1 and 2 of the bill would add to the Secretary of State's responsibilities relative to setting uniform standards for land records management, the establishment of uniform standards for recording land records. These standards are to be established in cooperation with the Registers of Deeds Association and the Real Property Section of the NC Bar Association as is currently required for uniform land record indexing standards.

Section 3 amends the statute which establishes uniform fees that registers of deeds may charge for services, by allowing a register of deeds to charge an additional $30 for the registering of a land record not in compliance with the uniform recording standards adopted. This fee would be in addition to any other applicable recording fees.

Section 4 amends the statute governing the register of deeds duties relative to recording and indexing land records. This section will require the register of deeds to determine that all statutory requirements for registration have been met prior to registering a document. This section also repeals the provision that establishes the standards for registration since these standards will be part of the uniform standards adopted under Section 2 of the bill.

EFFECTIVE DATE: The bill would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 873

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

S873-ARU-001 Page 1 of __

Date 6-15 ,1999

Comm. Sub. []
Amends Title []

Senator

moves to amend the bill on page 4, line 44,
by rewriting the line to read:
"Section 5. Sections 3 and 4 of this act become effective January 1, 2000 and apply to land record documents and instruments registered on or after that date. The remainder of this act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H924-PCSSE-002
PROPOSED COMMITTEE SUBSTITUTE
House Bill 924
THIS IS A DRAFT 10-JUN-99 16:46:54
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Community Mediation Centers. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-38.5. Community mediation centers.

(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible use of these centers by the courts and law enforcement officials across the State.

(b) Community mediation centers, functioning as or within nonprofit organizations and local governmental entities, may receive referrals from courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts.

(c) Each chief district court judge and district attorney shall encourage mediation for any criminal district court action pending in the district when the judge and district attorney determine that mediation is an appropriate alternative.

(d) Each chief district court judge shall encourage mediation for any civil district court action pending in the district when the judge determines that mediation is an appropriate alternative."

Section 2. G.S. 84-2.1 reads as rewritten:

"**§ 84-2.1. "Practice law" defined.**

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5."

Section 3. G.S. 90-330 reads as rewritten:

"**§ 90-330. Definitions; practice of marriage and family therapy.**

(a) Definitions. -- As used in this Article certain terms are defined as follows:

(1) Repealed by Session Laws 1993, c. 514, s. 1.

(1a) The "Board" means the Board of Licensed Professional Counselors.

(2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.

(3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling. -- Assisting individuals, groups, and families through the counseling relationship by treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.

b. Appraisal Activities. -- Administering and interpreting tests for assessment of personal characteristics.

c. Consulting. -- Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities. -- Identifying problems requiring referral to other specialists.

e. Research Activities. -- Designing, conducting, and interpreting research with human subjects.

<u>The "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.</u>

(4) A "supervisor" means any licensed professional counselor or, when one is inaccessible, an equivalently credentialed mental health professional, as determined by the Board, with a minimum of five years of counseling experience who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. -- No person licensed as a licensed professional counselor under the provisions of this Article shall be allowed

to hold himself or herself out to the public as a certified marriage and family therapist, licensed practicing psychologist, psychological associate, or certified clinical social worker unless specifically authorized by other provisions of law."

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

"ARTICLE 15.

"Mediation Negotiations.

"§ 8-110. Inadmissibility of negotiations.

(a) Evidence of statements made and conduct occurring during mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. No such settlement shall be binding unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation.

(b) No mediator shall be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct occurring in a mediation conducted by a community mediation center authorized by G.S. 7A-38.5. A civil proceeding includes any civil matter in any administrative agency or the General Court of Justice, including a proceeding to enforce a settlement reached at the mediation. For purposes of this subsection, a mediator is a person assigned by the center to conduct the mediation and any staff person employed by the center to provide supervision of that person. This subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or G.S. 108A-102.

(c) Except as provided in this subsection, no mediator shall be compelled to testify or produce evidence in any criminal misdemeanor or felony proceeding concerning statements made and conduct occurring in a mediation conducted at a community mediation center authorized by G.S. 7A-38.5. A judge presiding over the trial of a felony may; however, compel disclosure of any evidence unrelated to the dispute that is the subject of the mediation if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence is necessary to a proper administration of justice, and the evidence may not be obtained from any other source. For purposes of this subsection, a mediator is a person assigned by the center to conduct the mediation and any staff person employed by the center to provide supervision of that person. This

subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or G.S. 108A-102.

Section 5. G.S. 7A-38.1 reads as rewritten:

" (l) Inadmissibility of negotiations. -- Evidence of statements made and conduct occurring in a mediated settlement conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same ~~claim.~~ claim, except in proceedings for sanctions or proceedings to enforce a settlement of the action. No such settlement shall be enforceable unless it has been reduced to writing and signed by the parties. ~~However, no~~ No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference in any civil proceeding for any ~~purpose,~~ purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any such agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse."

Section 6. G.S. 7A-38.4(k) reads as rewritten:

"(k) Evidence of statements made and conduct occurring in a settlement proceeding conducted pursuant to this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same ~~claim.~~ claim, except in proceedings for sanctions or proceedings to enforce a settlement of the action. No such settlement shall be enforceable unless it has been reduced to writing and signed by the parties. ~~However, no~~ No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, or other neutral conducting a settlement procedure pursuant to this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any ~~purpose,~~ purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any such agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse."

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

HOUSE BILL 924:
Community Mediation Centers

BILL ANALYSIS

Committee:	Judiciary1	**Introduced by:**	Rep. Nesbitt
Date:	June 15, 1999	**Summary by:**	Jo B. McCants
Version:	H924-PCSSE-002		Committee Co-Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 924 encourages the establishment of and the widest possible use of community mediation centers by courts and law enforcement officials. The bill also provides that evidence of statements made during mediation; as well as, conduct occurring during mediation is not admissible in any proceeding in the action. House Bill 924 is effective when it becomes law.

BILL ANALYSIS:

Section 1. Section 1 provides that it is in the public interest to encourage the establishment of community mediation centers. These centers are also called dispute settlement centers and dispute resolution centers. The centers may receive referrals from the courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts. Chief district court judges and district attorneys should encourage mediation for any criminal or civil district court action that the judge and district attorney determines mediation is an appropriate alternative.

Section 2. Section 2 amends current law to provide that the phrase "practice law" does not include the drafting of memoranda of understanding or mediation summaries by mediators at community mediation centers.

Section 3. Section 3 amends current law to provide that the phrase "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers.

Section 4. Section 4 provides that evidence of statements made and conduct occurring during mediation at a community mediation center is not subject to discovery and is inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. However, if the evidence is otherwise discoverable, the exclusion does not apply.

A mediator cannot be compelled to testify or produce evidence in any criminal proceeding concerning statements made and conduct occurring during mediation. However, a mediator is not excused from reporting evidence of child abuse or elder abuse that is disclosed during the mediation.

Sections 5 and 6. Sections 5 and 6 provide that in superior court and in district court pretrial mediated settlement conferences statements made during negotiations are not subject to discovery and are inadmissible, except in proceedings for sanctions or proceedings to enforce a settlement of the action. A settlement must be reduced to writing and signed by the parties before it is enforceable.

Section 7. Effective Date: The act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, June 15, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**280** Motor Vehicle Tech. Amendments/AB

Draft Number:	PCS 7253
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

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

H.B.(CS #1)**924** Community Mediation Centers

Draft Number:	PCS 4268
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Will take to Sen. Cooper

(1)

VISITOR REGISTRATION SHEET

Judiciary I — 6-15-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	TDA Inc.
Polly Williams	NC Equity/AARP
Sally Wallace	Dtten - DOS Env. Division
William Morris	"
Rudy Little	NC Bar Association
Glenn Wilder	DHHS
Deborah Bryan	ALA of NC
Bernard Allen	SOS
Ruth Sappie	NCDOT
Ingrid Colley	DMV
Jim L. Edwards	DMV ENFORCEMENT
Mike Bryant	DL/DMV
Carol Howard	DMV
Gordon Griffin	DMV
Dave A Moody	DMV ENFORCEMENT

(2)

VISITOR REGISTRATION SHEET

Judiciary 1 — 6/15/99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Schafer	N.C. Bar Association
Matt Osborne	AOC
Dahr J. Tanoury	DOJ Intern
Katie Ghawi	DOJ Intern
Karen A. Blum	DOJ Intern
AL Iannuzzi	DOJ Intern
Bettina Roesler	DOJ intern
CHARLES C. KYLES	D.O.J. INTERN
Lori Zwan	AOC intern
Ian Ericksen	D.O.J.
Yolanda Webb	AGO Intern
ANDREW WAMBERG	AGO Intern
Ginger A. Bagley	DOJ Intern
Anne Nyanda	AGO - intern
Pamela Tyson	AGO intern

(3)

VISITOR REGISTRATION SHEET

Judiciary I — Name of Committee

6/15/99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Takeus C Nesbit	DOJ-intern
James C Martin II	DOJ - Summer Associate
Ron Levine	DHHS
Peg O'Connell	NC Prev Partners
Jim Martin	DHHS - DPH
Satchel Paige	NCAFC
Melissa Lovell	DOJ
Alicia Gregory	Poyner & Spruill
Ann Shaw	Randolph Co. Reg. of Deeds
Rex Minneman	SOS
Jim Bell	Atty
Katherine Miller	
Rocky Smith	NCCCC
John Bowden	Zeb Alley, PA.

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 17, 1999

The Senate Judiciary I Committee met on June 17, 1999 at 12:30 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Gulley to explain **Senate Bill 882 – AN ACT TO ESTABLISH A SYSTEM OF COMPREHENSIVE PUBLIC FINANCING OF ELECTIONS FOR GOVERNOR, COUNCIL OF STATE, AND GENERAL ASSEMBLY; AND TO MAKE RELATED CHANGES.**

Senator Clodfelter moved to adopt a Proposed Committee Substitute to Senate Bill 882 for discussion. The motion carried by a majority voice vote.

The following people were recognized to speak on the bill:

Tom Coulson, Madison County, President of N. C. Voters for Clean Elections
Jan Bingham, Common Cause
Paul Rosenberg, Chapel Hill
Deborah Ross, Executive Director of ACLU
Roy Moore, Greensboro, President of N. C. Senior Democrats
Mike Roulison, N. C. Consumers Council
Althea Calloway, Charlotte, N. C. League of Women Voters
George reed, N. C. Council of Churches
Lee Mortimer, Durham, Center for Voting and Democracy

Senate Bill 882 will be brought back to the Committee at a future meeting to continue the discussion.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Thursday, June 17, 1999
TIME: IMMEDIATELY AFTER SESSION
ROOM: 1027

The following bills or resolutions will be considered:

SB 882 Clean Election Act Gulley

Senator Cooper, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 882

Short Title: Clean Election Act. (Public)

Sponsors: Senators Gulley; Ballance, Kinnaird, Lucas, Martin of Guilford, Miller, Phillips, and Reeves.

Referred to: Rules and Operations of the Senate.

April 13, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 882
Proposed Committee Substitute -- S882-PCSRR-003

Short Title: Clean Election Act. (Public)

Sponsors:

Referred to: Rules and Operations of the Senate.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROGRAM WHICH ALLOWS VOTERS TO AUTHORIZE THAT PUBLIC FUNDS BE USED TO SUPPORT THE CAMPAIGNS OF CANDIDATES FOR GOVERNOR, LIEUTENANT GOVERNOR, OTHER COUNCIL OF STATE OFFICES, AND THE GENERAL ASSEMBLY WHO AGREE TO ABIDE BY FUND-RAISING AND SPENDING LIMITS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 22D.

"The North Carolina Clean Election Act.

"§ 163-278.61. Definitions.

When used in this Article:

(1) The term 'Board' means the State Board of Elections.

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

(3) The terms 'contested primary election' and 'contested general election' mean elections in

which there are more candidates than the number to be elected.

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

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

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

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

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

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

(10) The term 'qualifying contribution' means a donation of not less than fifteen dollars ($15.00) and not more than seventy-five dollars ($75.00) in the form of a check or money order payable to the candidate that is:

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

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

c. Acknowledged by a written receipt, on a form provided by the Board, which identifies the name, address, and principal occupation of the donor in accordance with G.S. 163-278.11; states that the donor is a registered voter who is eligible to vote for the office the candidate is seeking; and states that the donor authorizes the candidate to use the

contribution to qualify to receive campaign funds from the Clean Election Fund.

(11) The term 'excess qualifying contributions' means the qualifying contributions received in excess of a sum to be determined by multiplying the minimum number of qualifying contributions required for that office by the maximum dollar amount allowed for such contributions.

(12) The term 'qualifying period' means:

a. For participating candidates for Governor, Lieutenant Governor, and other offices in the Council of State, the period beginning 270 days before the close of the filing period for candidates for party nomination for the office and ending at the close of the filing period for candidates for party nomination for the office.

b. For participating candidates for State Senator and State Representative, the period beginning 120 days before the close of the filing period for candidates for party nomination for the office and ending at the close of the filing period for candidates for party nomination for the office.

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

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina, to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized, and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Clean Election Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for Governor, Lieutenant Governor, other Council of State offices, and the General

Assembly in elections to be held in 2002 and thereafter. Candidates participating in this Article must also comply with all other applicable election and campaign laws and rules. The Board shall administer this Article and the North Carolina Clean Election Fund.

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

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

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

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

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

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

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

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

(c) Determination of Fund Amount. -- By April 1, 2001, and every two years thereafter, the Board shall prepare and provide to the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the North Carolina Clean Election Act. In its report, the Board shall set out the funds received to date, the expected needs of the Fund during the next election cycle, and the amount of the appropriation from the General Assembly that will be needed for the biennium. The General Assembly shall include in its appropriations from the General Fund that year at least the amount that the Board states in its report will be needed. In addition, the General Assembly

shall reserve for the first fiscal year of the biennium at least fifteen percent (15%) of the amount of funds the Board states in its report that it will need during the biennium, to be used by the Board to cover any disbursement under G.S. 163-278.64 in excess of the amount of its direct appropriation.

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

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

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

(b) Restrictions on Contributions and Expenditures for Participating Candidates. -- After becoming a participating candidate as defined by G.S. 163-278.61(6) and prior to certification, participating candidates shall not accept contributions, except for qualifying contributions. A participating candidate shall expend only from the qualifying contributions raised and shall not use other funds.

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

(1) For a candidate for Governor, at least 7,000 verified registered North Carolina voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

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

(4) For a candidate for State Senator, at least 500 verified registered voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(5) For a candidate for State Representative, at least 250 verified registered voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

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

(d) Filing With the Board. -- All participating candidates shall report qualifying contributions with the Board at least five business days after the end of the qualifying period in accordance with procedures developed by the Board, except as provided under subsection (m) of this section.

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

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

(2) Reported the appropriate number of qualifying contributions;

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

(4) Complied with expenditure restrictions; and

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

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

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

(f) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. -- After filing a declaration of intent, a candidate shall limit campaign expenditures and debts to the qualifying contributions and the revenues distributed to the candidate from the Fund, provided that a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of a candidate's base level of public financing as determined under subsection (h) of this section. All revenues from qualifying contributions, public funds, or in-kind contributions from a political party must be used for campaign-related purposes. The Board shall publish guidelines outlining

permissible campaign-related expenditures. A candidate shall return to the Fund any amount that is unspent and uncommitted at the time that person ceases to be a candidate before a primary or election for which the Fund money was distributed. A candidate shall return to the Fund any amount that was unspent and uncommitted after the date of the primary election or general election for which the Fund money was distributed.

(g) Timing of Fund Distribution. -- The Board shall distribute to certified candidates revenues from the Fund in amounts determined under subsection (h) of this section, minus any excess qualifying contributions, in the following manner:

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

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

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

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

(h) Amount of Fund Distribution. -- By March 1, 2001, and no less frequently than every two or four years thereafter, as appropriate, the Board shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows:

(1) Contested Primary Elections. -- The amount of revenues to be distributed is the average amount of campaign expenditures made by the number of highest vote-receiving candidates equal to twice the number

of candidates to be nominated during all contested primary election races for the immediately preceding two primary elections for that office, provided that each of the following shall be considered a separate office for purposes of calculating the average:

a. Governor.

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

c. State Senate district seats.

d. State Representative district seats.

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

(3) Contested General Elections. -- The amount of revenues to be distributed is the average amount of campaign expenditures made by the number of highest vote-receiving candidates equal to twice the number to be elected during all contested general election races for the immediately preceding two general elections for that office as defined in subdivision (1) of this subsection.

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

The average for Senate races shall be calculated using all the applicable Senate races in the State, rather than those in the same district. The same method shall be used for House races. If the immediately preceding two election cycles do not contain sufficient data for the Board to determine the amount to be distributed for an office, the Board shall use data from the most recent applicable elections for that office. If no applicable elections for that office contain sufficient data, the Board shall set an amount based on data from elections for comparable offices.

(i) Reporting by Noncertified Candidates. -- Any noncertified candidate who has as an opponent a certified candidate shall report to the Board 20 days before an election a statement of the amount that the noncertified candidate intends to spend for that

election, as well as the total amount raised and borrowed to date. Any noncertified candidate with a certified opponent shall report electronically to the Board within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, exceeds the base level of public funding described in subsection (h) of this section. Reports required by this subsection shall be made according to procedures developed by the Board.

(j) Matching Funds. -- When any campaign, finance, or election report or group of reports shows that the sum of a noncertified candidate's actual or estimated expenditures or obligations made, or funds raised or borrowed, whichever is greater, exceeds the amount described under subsection (h) of this section, the Board shall issue immediately to any opposing certified candidate an additional amount equivalent to the reported excess within the limits set forth in this subsection. Total matching funds to a certified candidate in an election are limited to an amount equal to the base amount described in subdivisions (1) or (3) of subsection (h), whichever is applicable.

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

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

and may utilize electronic means of reporting and storing information.

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

(n) Appeals. -- The initial decision on an issue concerning qualification, certification, or distribution under this Article shall be made by the Executive Secretary-Director of the Board. The procedure for challenging that decision is as follows:

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

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

(3) A losing party may appeal a decision of full Board by commencing an action in superior court.

(4) A candidate whose certification under this Article is revoked on appeal shall return to the Board any unspent revenues distributed by the Fund. If the Board or the court finds that an appeal was made frivolously or made with the intent to cause hardship or undue delay, the Board or the court may sanction the moving party by requiring that party to pay the costs of the Board, the court, or the opposing parties, or any of them, if any costs have accrued.

§ 163-278.65. Enforcement by Board.

(a) Enforcement by Board. -- The Board, with the advice of the Clean Election Advisory Council, shall administer the provisions of this Article.

(b) Clean Election Advisory Council -- There is established under the State Board of Elections the Clean Election Advisory Council. The Clean Election Advisory Council shall advise the Board on the rules it promulgates for the enforcement of this

Article, on the administration of this Article and the rules, and on the funding needs of the Clean Election Fund. The Clean Election Advisory Council shall consist of five members to be appointed by the Governor. The Governor shall take into consideration recommendations made by the public and by political and other interested organizations. No more than two Council members shall be affiliated with the same political party. No elected official or candidate for elective office shall be eligible to be a member of the Council. The initial Council members shall be appointed by September 1, 2000. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. A person may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Council members shall be elected by the members as chair. A vacancy during an unexpired term must be filled as provided in this subsection, but only for the unexpired portion of the term.

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

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

"**§ 163-278.67. Violations.**

(a) Civil Penalty. -- In addition to any other penalties that may be applicable, any person who violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation. In addition to any civil penalty, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty due and shall notify the person who is assessed the civil penalty of the amount. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of the expenditure limits of this

Article, the Board may consider as a mitigating factor any circumstances out of the person's control.

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

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

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

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

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

Section 3.(b) The Secretary of Revenue shall transfer to the North Carolina Clean Election Fund any funds contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its amendment by this section but not yet transferred to that Fund.

Section 4. G.S. 163-278.13 is amended by adding a new subsection to read:

"(e2) In order to make meaningful the provisions of the North Carolina Clean Election Act, as set forth in Article 22D of this Chapter, no candidate for Governor, for Lieutenant Governor, for any other office in the Council of State, or for the General Assembly shall accept a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election. No contributor shall make a

contribution to a candidate for Governor, for Lieutenant Governor, for any other office in the Council of State, or for the General Assembly during the period beginning 21 days before the general election and ending the day after the general election. The prohibitions in this subsection shall also apply to a political committee the principal purpose of which is to support a candidate for those offices. Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22D of this Chapter.

(2) That certified candidate has not received the maximum matching funds available under G.S. 163-278.64(j).

The recipient of a contribution that apparently violates this subsection has five days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection."

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

Section 6. There is appropriated from the General Fund to the State Board of Elections the sum of fifty thousand dollars ($50,000) for the 1999-2000 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2000-2001 fiscal year to administer the provisions of this act.

Section 7. Section 4 of this act becomes effective January 1, 2002, and applies to general elections for Governor, Lieutenant Governor, other Council of State offices, and the General Assembly after that date. The remainder of this act is effective when this act becomes law.

Clean Election Act – Sen. Wib Gulley

Proposed Committee Substitute for Senate Bill 882

William R. Gilkeson, Staff Attorney, Legislative Services Office.

What is the Purpose?	". . . to ensure the vitality and fairness of democratic elections in North Carolina, to the end that any citizen of this State can realistically choose to seek and run for public office. . . .also . . . to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. . ."
Where Does Funding Come From?	• Money distributed to participating candidates but then returned unspent. • Leftover money from Candidates Financing Fund (built up since that Fund was created in 1988). • Voluntary contributions made on State Income Tax Return or otherwise. • Appropriations by the General Assembly.
Who May Participate?	Candidate for Governor, Lt. Gov. or other Council of State office, State Senate or State House who: • Files a declaration of intent to participate and to abide by the spending limits during the campaign; • Raises the required amount in "qualifying contributions."
What Are Qualifying Contributions and How Much Must a Candidate Raise in Qualifying Contributions to Be Certified?	A qualifying contribution is a check or money order payable to the candidate by a registered voter who is eligible to vote for the office the candidate is seeking. It can be no less than $15 and no more than $75. It must be raised during a period ending with the candidate filing deadline and beginning 120 days earlier for legislative candidates and 270 days earlier for the statewide candidates. To be certified for Clean Election Act funds, the candidates must raise qualifying contributions from the following numbers of registered voters: • Governor 7,000 registered voters. • Lt. Gov./other Council of State 3,000 registered voters. • State Senator 500 registered voters. • State Representative 250 registered voters. Candidate may keep qualifying contributions, but any excess raised over the threshold will reduce candidate's public funding.
What Else Must a Participating Candidate Do?	• Report spending according to a schedule set by the Commn. • Accept no private contributions (other than qualifying contributions and contributions from candidate's party if the party contributions do not exceed 10% of Clean Act funds). • Spend only from public funds, qualifying contribs, or party $

When Are Funds Distributed?	• Within 3 business days after end of filing period for candidates certified for the primary. • Within 3 business days after the primary or 3 business days after the first general election opposition otherwise appears, for candidates certified for general election.
How Much Is Distributed?	For contested primaries, the average amount spent by the two highest vote-getting candidates in contested primaries for the office for the past 2 election cycles. For uncontested primaries, the average amount spent by the candidates in uncontested primaries for the office for the past 2 election cycles, or by contested primary elections if that is lesser. For contested gen. elections, the average amount spent by 2 highest candidates in all contested races for the office in past 2 gen. elections. For uncontested general elections, no distribution at all. The above amount is reduced by the amount of any qualifying contributions the candidate received above the qualifying threshold.
What Must Non-Participants Do?	Give an estimate of last-minute expenditures to the Commission 20 days before the election. Report within 24 hours any transaction over the Clean Act candidate's limit. Suspend fundraising in last 21 days before gen. election, if opponent is Clean Act candidate who has not maxed out on matching funds.
What Happens If Participants Are Outspent by Non-Participants?	If expenditures by opposing candidate exceed what the Clean Act candidate can spend, Clean Act candidate receives from the Fund additional money to match the excess, up to 100% of the normal funding for primary or general.
How Is the Act Enforced?	By State Board of Elections. It would be advised by a Clean Election Advisory Council with 5 members appointed by Governor to 4-year terms. No more than 2 from same party. Governor shall consider nominees put forth by the public and by organizations, but is not limited to them. No elected official or candidate is eligible for appointment. Violations are subject to a civil penalty of up to $10,000. The candidate may also be required to return all Fund money previously distributed. Class I felony for willful and knowing violations and for knowing false statements made on Clean Act reports. State Board of Elections has rulemaking authority.

No single reform can solve election problems

I have favored public financing since I served on the Election Laws Reform Committee in 1996. The Clean Elections Act is essential to restore public trust in politics and reassure voters that political leaders are not beholden to special-interest contributors.

But the problem goes beyond whether elections are "for sale." Usually money is not the decisive factor. The larger problem is that "winner-take-all" elections are structurally non-competitive.

Of the 340 legislative elections in 1996 and 1998, 274 elections, or 81 percent, were won by 10 percentage points or more. Usually it's 20, 30, or 40 points. In 129 elections, there was not even a major-party opponent. On this committee, only Senators Albertson, Carter, Metcalf, Rand, and Wellons, faced a competitive election in either 1996 or 1998.

According to the Center for Voting and Democracy in Washington, a well-funded campaign can add about four percentage points to a candidate's final vote. But when elections are won by 20, 30, 40, or 100 points, it's unlikely that even "clean-money" financing can make those elections competitive.

Candidates don't win because they have more money. They have more money because the contributors know in advance who the winners are going to be.

Voters are influenced by party affiliation more than anything they hear in campaign speeches or TV commercials. Gerrymandering is often used to create artificial partisan majorities. But elections are just as predictable from the partisan composition of voters who happen to live in a voting jurisdiction.

Rather than non-competitive general elections, the real place for concentrating public financing should be in primaries, where partisan distinctions are absent and name recognition can go a lot further in helping a primary challenger.

Empowering voters and revitalizing the political process requires more than any single reform can do. The range of needed reforms includes election-day voter registration, longer and more convenient voting times, easier ballot access, an independent redistricting commission, and proportional representation as an alternative to non-competitive winner-take-all elections.

(See other side)

Lee Mortimer, 4116 Livingstone Place, Durham, NC 27707

Non-competitive elections in North Carolina

1996

Senate (50 elections)	House (120 elections)	House & Senate (170 elections)	% 170 elections
36 won by +10%	95 won by +10%	131 won by +10%	77%
27 won by +16%	81 won by +16%	108 won by +16%	64%
20 won by +26%	64 won by +26%	84 won by +26%	49%
13 won by +40%	53 won by +40%	66 won by +40%	39%
10 unopposed	44 unopposed	54 unopposed	32%

1998

Senate (50 elections)	House (120 elections)	House & Senate (170 elections)	% 170 elections
39 won by +10%	104 won by +10%	143 won by +10%	84%
33 won by +16%	86 won by +16%	119 won by +16%	70%
27 won by +26%	70 won by +26%	97 won by +26%	57%
21 won by +40%	60 won by +40%	81 won by +40%	48%
18 unopposed	57 unopposed	75 unopposed	44%

1996 & 1998

Senate (100 elections)	House (240 elections)	House & Senate (340 elections)	% 340 elections
75 won by +10%	199 won by +10%	274 won by +10%	81%
60 won by +16%	167 won by +16%	227 won by +16%	67%
47 won by +26%	134 won by +26%	181 won by +26%	53%
34 won by +40%	113 won by +40%	147 won by +40%	43%
28 unopposed	101 unopposed	129 unopposed	38%

('Unopposed' elections are those without a major-party opponent)

Testimony of
J. George Reed
North Carolina Council of Churches
to the Senate Judiciary I Committee
June 17, 1999

My name is George Reed and I am with the North Carolina Council of Churches. I'm here today to convey to you the growing support among people of differing faiths and theologies for public financing of campaigns. This has been the policy of the Council of Churches for a number of years. And last month, the Council on Christian Life and Public Affairs of the Baptist State Convention, which is NOT a member of the Council of Churches, also endorsed public financing.

For many of us, it has become a justice issue. When I speak of justice, what I mean is this: We believe that all people are created in God's image, that all are sons and daughters of God, that all are equally valued by God. And, because of that, we believe that our society ought to treat everyone fairly and equally, with no preference for whites over African-Americans or Latinos, for men over women, rich over poor, educated over uneducated.

As Barbara Campbell Davis, Executive Presbyter and Stated Clerk for the Presbytery of New Hope, says in a letter to the committee: "Our current system has turned wealth into the most influential factor in determining whether or not a new candidate can get elected. Such a system is especially harmful to women and people of color as both candidates and voters."

When people who are otherwise qualified cannot run for public office simply because they can't raise the tens of thousands of dollars needed, that is a justice issue. When the current system permits one individual to give more to one candidate than a full-time minimum-wage worker earns annually, that's a justice issue. When those who can't afford to contribute anything feel that their access and influence are greatly limited, that is a justice issue.

And why do people think that? They think that because it fits with their life experiences. Most of us, I suspect, have seen situations in which money has been related to access and influence. It may have been nothing more that an uncle who sent large checks as birthday presents or a grandmother who helped pay the college tuition. Or it may have been a foundation that funded a program and thereby exerted influence on what an organization did. And it may have been a pastor who seemed more attentive to the needs of the church's biggest contributors.

These arrangements tend to create the perception, and sometimes the reality, of favoring the giver and excluding the non-giver. And they are experiences that many folks have had, in one setting or another.

S 882 offers you the chance to change the current campaign finance system, a system which creates at least the perception, and probably also some reality, of favoring whites over people of color, men over women, the wealthy over people of modest means. It gives you the chance to create a system that is more just.

North Carolina Legislature
Senate Judiciary I. Committee
N.C. Clean Election Act
Presenter: Dr. Roy D. Moore
P. O. Box 22043
Greensboro, NC 27420
PH: (336) 272-4846
Fax: (336) 574-1719

June 17, 1999

Honorable Roy Cooper
Majority Leader
State Senate
N.C. General Assembly
Raleigh, NC 27601

Honorable Patrick Ballantine
Minority Leader
State Senate
N.C. General Assembly
Raleigh, NC 27601

Honorable Phil Baddour
Majority Leader
State House
N.C. General Assembly
Raleigh, NC 27601

Honorable Richard Morgan
Minority Leader
State House
N.C. General Assembly
Raleigh, NC 27601

Dear Gentlemen:

This is in support of SB-882 and HB-1042, the N.C. Clean Election Act. I am Roy D. Moore, Sr. and I reside in Greensboro, NC in Guilford County. My community organizational memberships include the following:

1. President, N.C. Senior Democrats, greatest voting block in N.C.
2. Chairman of Legislative Committee, Guilford County Chapter of the Retired Officers Association of America
3. Member, Citizens on Responsible Government of Guilford County
4. Chair, Community Affairs Committee, Greensboro Branch, NAACP
5. State Vice Chair, Piedmont District, North Carolina Black Leadership Caucus
6. Outgoing Second Vice Chair, Guilford County Democratic Party
7. First Vice Chairman, Guilford County Senior Democratic Party
8. Immediate Past Chair, Guilford County Pan Hellenic Council
9. Member, Greensboro Senior Leadership, a program of the Greensboro Chamber of Commerce

It is a distinct honor and civic responsibility for me to share my opinion and offer my support for the **N.C. Clean Election Act**. Presently, it appears that wealth is a major factor in our state in the outcome of a great number of our elected officials. The poor feel

that they are without a voice in the electoral system, hence they conclude that they are really not a part of a system that is suppose to be *of the people, for the people and by the people*. Clean Election Act or public financing by the general population conveys the feeling that his/her vote counts.

Public financing by the population will encourage wider participation in total governmental operations as well as increase in voting. One often concludes the Big business and Private donations presents a picture of special interest control of the government, which may or may not be true. There is a need for a system that requires every candidate to use the same starting line (from a standpoint of financial support). Public financing enhances the possibility of maintaining strong state and hence national governments. This vague existing financial support for candidates can undermine our democratic system. We don't want to become as the old adage, *"a slip of the halo soon becomes a noose"*. We are tired of the way money has been influencing the political process.

The number of organizations that I listed is composed of actual voters and they represent a large number of people. Please be reminded that *Good People* find it difficult to run for office unless there is big money available. The principle of one person, one vote is in peril. We should not be in a system that always presents the question, where is the money coming from rather than where do you stand on the issues.

The **Clean Election Act** will solve many of the problems of unfair elections and I am asking passage by the legislature.

MEMORANDUM

To: The Honorable Roy A. Cooper, III
Chairman, Senate Judiciary Committee

From: Robert B. Morgan

Subject: Senate Bill 882

Date: June 16, 1999

I appreciate the opportunity you extended to me to appear before the Committee today to speak in support of SB 882. The bill has merit, and I hope that after due consideration, members of the Committee will approve it overwhelmingly. I regret, however, that I cannot be with you to personally speak in support. Unfortunately, an unexpected medical concern requires that I be at the Duke Medical Center at the time of the Committee hearing.

I do feel very strongly that the influence of money and the emphasis on contributions in political campaigns have caused the great majority of citizens to believe there no longer is any effective role for them to play in the electoral process. As a result, we have seen interest and involvement in political activities plummet and cynicism in the political system increase alarmingly.

Within a recent eight-day period, I received invitations to political fundraisers totaling $5,000. Last night, there were events for two good candidates whom I would have been pleased to support. However, the price of attendance was such that I simply felt that I could not afford it. If we intend to remain a democracy, we have to find a way for the great mass of the people to be involved. We do not accomplish that goal when most campaign events are expensive fund-raisers that exclude all but a very few; that ensure access to those who can give; and that cause all others to doubt that their voices will ever be heard.

I recently wrote a guest column on the subject of campaign finance that was printed in many North Carolina newspapers. It expresses in much more detail my feelings on this matter that I consider of great important to the future health of our state, nation and political system. I have asked that you be provided with a copy.

In my opinion, we have put off for far too long the hard decisions on the matter of campaign financing. The bill before you today offers a chance to begin correcting the ills that most of us admit exist. I commend it to you.

Money chase threatens democracy

Public financing of campaigns offers the best way to ensure fair elections

By Robert B. Morgan
GUEST COLUMNIST

It's time to sound the alarm. Unless we take action now, I fear we risk losing our democracy. High-cost elections and wealthy special interests are literally pricing out the ordinary citizen. If Jane or John Doe can't afford to be a candidate, or even a constituent, we can no longer claim to have government of, for and by the people.

I have run in 18 primary and general elections, from clerk of Superior Court to U.S. senator, and I confess that I wouldn't have the nerve to run for public office today because of the tremendous amount of money required to win.

Some candidates for the General Assembly now raise three times what I spent for a statewide race for attorney general. I can understand why talented people, with a desire to serve the public, do not feel like running for office. They are simply driven away by the prospect that to succeed they must spend a great deal of time chasing after large donations.

There is a second way the average person is squeezed out by this money chase. I do not believe a candidate who receives a sizable campaign contribution is selling his or her vote. But I've been there. I've held office in Raleigh and in Washington, and I know that it is hard not to listen to the contributor's representatives whenever they come calling. I also know that most citizens do not have that kind of access to a legislator.

People see that the cash constituent counts more than the voting constituent, and it doesn't just make them mad. It makes them feel powerless and, in too many cases, it pushes them away from politics altogether. It turns hopeful voters into cynical nonvoters. As the amount of money spent on elections has sky-rocketed, voter participation has actually declined.

What can be done to weaken the grip of big money over politics and put voters back in the center of our democracy? The U.S. Supreme Court says we can't just shut off the supply of special-interest cash or put a mandatory lid on how much candidates can raise and spend.

ROBERT MORGAN: He says elections should belong to the voters.

But we can create an alternative supply of "clean money" to reward the candidates who spend their time soliciting support from ordinary citizens instead of from wealthy contributors. If enough voters agree, the candidate can get a competitive amount of campaign money from a publicly funded clean-election fund.

Yes, this is public financing of campaigns. I don't like the idea of tax money paying for elections, but I find no other solution. We pay for the balloting process with our taxes, and if we want a fair election system, we must also pay for a program that gives candidates who voluntarily reject special-interest donations a fair chance to succeed.

In the past month, more than 50 members of the General Assembly have sponsored a bill to set up such a program under the N.C. Clean Election Act. This diverse group of legislators includes conservatives, moderates and liberals who all recognize that the money chase is threatening the integrity of fair elections in North Carolina.

They include Reps. Martha Alexander, Alma Adams, Walter Church, Beverly Earle, Wayne Goodwin, Dewey Hill, Mary Jarrell, Maggie Jeffus, Martin Nesbitt, Pete Oldham, Ronnie Smith, Larry Womble and Doug Yongue as well as Sens. Wib Gulley, Kay Hagan, Ellie Kinnaird, Howard Lee, Bill Martin, Beverly Perdue, Jim Phillips, William Purcell and Ed Warren.

These lawmakers deserve our thanks. They aren't just saying there is a problem; they are taking the initiative to support innovative solutions. The N.C. Clean Election Act gives voters veto power over who can receive their tax money. It makes the candidate work hard to get hundreds of registered voters to donate $15 to $75 apiece, as evidence that they approve releasing public money. The candidate must also sign a legally binding pledge to take no special-interest money and accept strict spending limits.

This program offers hope for our democracy — a way for voters to have real ownership of elections and for candidates to free themselves from the grip of wealthy, special-interest donors. Other states have begun similar programs. I wish we could put one in place in North Carolina right away and reduce the threat of big-money politics. But I know it will be a hard fight.

Of course, nobody said defending democracy would be easy. In fact, its vitality depends on our alert action. Let's get more involved, not squeezed out.

■ *Morgan, an attorney in Lillington, has served North Carolina as a state legislator, attorney general, U.S. senator and director of the State Bureau of Investigation.*

This column has appeared in numerous other newspapers across the state. The paragraph with names of legislative sponsors was changed to highlight local members of the General Assembly.

MEMORANDUM

To: The Honorable Roy A. Cooper, III
Chairman, Senate Judiciary Committee

From: Robert B. Morgan

Subject: Senate Bill 882

Date: June 16, 1999

I appreciate the opportunity you extended to me to appear before the Committee today to speak in support of SB 882. The bill has merit, and I hope that after due consideration, members of the Committee will approve it overwhelmingly. I regret, however, that I cannot be with you to personally speak in support. Unfortunately, an unexpected medical concern requires that I be at the Duke Medical Center at the time of the Committee hearing.

I do feel very strongly that the influence of money and the emphasis on contributions in political campaigns have caused the great majority of citizens to believe there no longer is any effective role for them to play in the electoral process. As a result, we have seen interest and involvement in political activities plummet and cynicism in the political system increase alarmingly.

Within a recent eight-day period, I received invitations to political fundraisers totaling $5,000. Last night, there were events for two good candidates whom I would have been pleased to support. However, the price of attendance was such that I simply felt that I could not afford it. If we intend to remain a democracy, we have to find a way for the great mass of the people to be involved. We do not accomplish that goal when most campaign events are expensive fund-raisers that exclude all but a very few; that ensure access to those who can give; and that cause all others to doubt that their voices will ever be heard.

I recently wrote a guest column on the subject of campaign finance that was printed in many North Carolina newspapers. It expresses in much more detail my feelings on this matter that I consider of great important to the future health of our state, nation and political system. I have asked that you be provided with a copy.

In my opinion, we have put off for far too long the hard decisions on the matter of campaign financing. The bill before you today offers a chance to begin correcting the ills that most of us admit exist. I commend it to you.

Money chase threatens democracy

Public financing of campaigns offers the best way to ensure fair elections

By Robert B. Morgan
GUEST COLUMNIST

It's time to sound the alarm. Unless we take action now, I fear we risk losing our democracy. High-cost elections and wealthy special interests are literally pricing out the ordinary citizen. If Jane or John Doe can't afford to be a candidate, or even a constituent, we can no longer claim to have government of, for and by the people.

I have run in 18 primary and general elections, from clerk of Superior Court to U.S. senator, and I confess that I wouldn't have the nerve to run for public office today because of the tremendous amount of money required to win.

Some candidates for the General Assembly now raise three times what I spent for a statewide race for attorney general. I can understand why talented people, with a desire to serve the public, do not feel like running for office. They are simply driven away by the prospect that to succeed they must spend a great deal of time chasing after large donations.

There is a second way the average person is squeezed out by this money chase. I do not believe a candidate who receives a sizable campaign contribution is selling his or her vote. But I've been there. I've held office in Raleigh and in Washington, and I know that it is hard not to listen to the contributor's representatives whenever they come calling. I also know that most citizens do not have that kind of access to a legislator.

People see that the cash constituent counts more than the voting constituent, and it doesn't just make them mad. It makes them feel powerless and, in too many cases, it pushes them away from politics altogether. It turns hopeful voters into cynical nonvoters. As the amount of money spent on elections has sky-rocketed, voter participation has actually declined.

What can be done to weaken the grip of big money over politics and put voters back in the center of our democracy? The U.S. Supreme Court says we can't just shut off the supply of special-interest cash or put a mandatory lid on how much candidates can raise and spend.

ROBERT MORGAN: He says elections should belong to the voters.

But we can create an alternative supply of "clean money" to reward the candidates who spend their time soliciting support from ordinary citizens instead of from wealthy contributors. If enough voters agree, the candidate can get a competitive amount of campaign money from a publicly funded clean-election fund.

Yes, this is public financing of campaigns. I don't like the idea of tax money paying for elections, but I find no other solution. We pay for the balloting process with our taxes, and if we want a fair election system, we must also pay for a program that gives candidates who voluntarily reject special-interest donations a fair chance to succeed.

In the past month, more than 50 members of the General Assembly have sponsored a bill to set up such a program under the N.C. Clean Election Act. This diverse group of legislators includes conservatives, moderates and liberals who all recognize that the money chase is threatening the integrity of fair elections in North Carolina.

They include Reps. Martha Alexander, Alma Adams, Walter Church, Beverly Earle, Wayne Goodwin, Dewey Hill, Mary Jarrell, Maggie Jeffus, Martin Nesbitt, Pete Oldham, Ronnie Smith, Larry Womble and Doug Yongue as well as Sens. Wib Gulley, Kay Hagan, Ellie Kinnaird, Howard Lee, Bill Martin, Beverly Perdue, Jim Phillips, William Purcell and Ed Warren.

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SUBMITTED TO:

SENATE JUDICIARY I COMMITTEE

Hearings on the

CLEAN ELECTION ACT

June 17, 1999

A Sample of Statements of Support from across North Carolina

North Carolina Voters for Clean Elections

MEMORANDUM

To: The Honorable Roy A. Cooper, III
Chairman, Senate Judiciary Committee

From: Robert B. Morgan

Subject: Senate Bill 882

Date: June 16, 1999

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In my opinion, we have put off for far too long the hard decisions on the matter of campaign financing. The bill before you today offers a chance to begin correcting the ills that most of us admit exist. I commend it to you.

Date: Wed, 16 Jun 1999

Attention:
SENATOR ROY COOPER,
REPRESENTATIVES PHIL BADDOUR, MARTHA ALEXANDER, &
DONALD BONNER

The present 'system' in which the playing field is tilted in favor of the richest candidate is making a bad joke of the concepts which empowered the wonderful people who wrote our Constitution.

You have an opportunity to show the nation that we don't want to be the showpiece of injustice - let's hope that the next Bill Moyers show will demonstrate that North Carolina isn't accepting the dollar as the ballot.

Yours truly,

Joe W. Straley, Facilitator of Witness For Peace
- Chapel Hill

Date: Wed, 16 Jun 1999

Senator Roy Cooper
State Legislative Building
Raleigh, North Carolina 27601

Dear Senator Roy Cooper,

Now is the time for campaign finance reform. As a voter I feel increasingly powerless when it comes to having my voice heard. The current system favors special interests who have the money to turn law makers heads.
I am but a tradesman with limited resources, I count on my vote to speak for me. Who should run our state? Voters or special interests. Please make our election system user friendly.

Jon Vanderglas
Raleigh, NC.

Date: Tue, 15 Jun 1999

To Senator Roy Cooper
Gen. Assembly, Raleigh, NC 27601

I would like to add my voice to those who urge you to support the "Clean Elections Act".

Hermann Heyge
907 McDowell Dr.
Greensboro, NC 27408

Date: Tue, 15 Jun 1999

To: Members of Senate Judiciary I Committee, Sen. Roy Cooper, chair
Members of Election Law and Campaign Finance Reform Committee,
Rep. Mary Alexander and Rep. Donald Bonner, co-chairs

Senator Gulley's North Carolina Clean Elections Act stands as a model of the kind of real reform that many North Carolinians wish to see enacted. Public financing of campaigns is sometimes perceived as "welfare for politicians." But what we the voters and taxpayers of North Carolina must realize is that we already have a system which funnels tax money, our tax money, through the campaign system and out to special interest donors. This is the way we are now paying for the campaign system, tax dollars are not being collected from the biggest donors who are often either wealthy individuals or connected to wealthy corporations. If a person wants to run for a public office but does not have a hundred thousand dollars to spend and refuses to accept money from wealthy special interest groups, then we have a responsibility as a democracy to help that person be competitive even with the wealthiest of opponents.

Please help make the electoral system in North Carolina one which is responsive to the vast majority of our citizens who desire only that their concerns be heard as loudly as those with large checkbooks and hopes of making them even larger.

Very truly yours
Dr. James H. Shelly
1008 Bayfield Drive
Raleigh, NC 27606-1702
Senate Dist. 14, House Dist. 63

Date: Tue, 15 Jun 1999
Subject: Clean Elections Act

Senator Roy Cooper, Chair, Judiciary I Committee

I wish to support SB 882/HB1402.

Elections in a free society presuppose an informed electorate. Groups like Farmers for Fairness subvert the goal of informing the electorate, and huge sums of money subvert the process of governing. The Clean Election Act will offer a candidate some alternative to raising funds. Representing all of the people is problematic when one set of voters can contribute $318,323, and in another zip code the contribution is $15,925. It would be very difficult not to pay more attention to the contributors in the higher zip. Money does buy attention and access.

June M. Kimmel
POB 595
Davidson, NC 28036

(My Representative is Drew Saunders; my Senator is Fountain Odom.)

Representatives Phil Baddour, Martha Alexander, and Donald Bonner
and the Election Law and Campaign Finance Reform Committee
North Carolina General Assembly
Raleigh, North Carolina 27601

Dear Mr. Baddour, Ms. Alexander, and Mr. Bonner,

As North Carolina citizens, tax-paying residents and voters, we strongly urge you to support the Clean Elections Act. The needs of the citizens of this State must have political representation and response equal to the well-financed PAC's, corporations, and other special interests.

Sincerely,

Lewis M. and Margaret S. Miles
412 Sharon Road
Chapel Hill, NC 27514

Date: Wed, 16 Jun 1999
Subject: Clean Elections Act

Senator Roy Cooper and
Members of the Judiciary I Committee

Please give your full support to the Clean Election Act. Not doing so perpetuates a system that lends itself to, if not corrupt, at least to practices that pave the way for favoritism and unhealthy associations. I want to believe that elected officials can represent all of the people fairly and honestly. Clean elections are possible, just as doing the right thing has always been possible.

Rosella Z. Wolbarsht
(rzwolbar@duke.edu)

Date: Thu, 10 Jun 1999

Subject: Clean Election Act

I urge a favorable consideration and support for the CLEAN ELECTION ACT. I consider it critical to restoring a fair and sane election process.

Earl Trevathan, MD.
Greenville, NC
E-Mail Address: etrev@ecu.campuscwix.net

Date: Tue, 15 Jun 1999

Senator Roy Cooper
and The Judiciary I Committee
North Carolina General Assembly
Raleigh, North Carolina 27601

Dear Senator Cooper and Colleagues,

As North Carolina citizens, tax-paying residents and voters, we strongly urge you to support the Clean Election Act. The needs of the citizens of this State must have political representation and response equal to the well-financed PAC's, corporations, and other special interests.

Sincerely,

Lewis M. and Margaret S. Miles
412 Sharon Road
Chapel Hill, NC 27514

Date: Tue, 15 Jun 1999

Dear Senator Cooper:

I am following the campaign finance reform discussion closely, for I believe that the role of large cash donations by special interests pervert our democratic process. What a cancer is to a person, so is the influence of special interest money in a democracy. When money measures the worth of ideas, we are surely on the road to tyranny.

Have courage, exercise leadership and be responsible. Get yourself, your colleagues and the rest of us out from under the thumb of big money.

Most sincerely,

Leo Briere
Raleigh, N.C. 27612

Date: Tue, 15 Jun 1999

Senator Cooper
General Assembly
Raleigh, NC 27601

Dear Senator Cooper:

I support the Clean Election Act, and I believe strongly that it is the answer to the problem of big money in politics. We need to reclaim democracy from the special interests that currently have the ability to control elections. Thank you for your support of this vital legislation.

Joan Walsh, PhD
Durham, NC

Date: Tue, 15 Jun 1999

Senator Roy Cooper
General Assembly
Raleigh, NC 27601

Dear Senator Cooper,

We believe that campaign finance reform is the most important issue before the General Assembly. Please support efforts such as those put forward by Democracy South to put campaign financing in the hands of the people and not large donors such as corporations.

We will not be able to be there on Thursday, June 17. Hope this reaches you.

Thank you,

Jim and Helen Jett
PO Box 662
Clayton, NC 27520
919-553-0281

Date: Mon, 14 Jun 1999

To:
Senator Roy Cooper
General Assembly
Raleigh 27601

Dear Sir,

I fervently believe that the only way to effect truly representative democracy is to enact campaign reform legislation that is comprehensive, able to withstand constitutional tests, and that can be held up as a model to the nation. Please do all in your power to enact campaign reform legislation.

Sincerely,

John Parton
118 W. Lynch St.
Durham, NC 27701
jparton@mindspring.com

Date: Mon, 14 Jun 1999

To: Sen. Roy Cooper and Rep. Phil Baddour, Rep. Martha Alexander, Rep. Donald Bonner

Ladies and Gentlemen,

This is to URGE your support for the Clean Elections bill now before the General Assembly.

Countless citizens whom I know personally believe this kind of reform is urgently needed.

Thank you for your consideration.

Larry T. Queen
620 Southeastern Bldg.
102 N. Elm St.
Greensboro, N.C.,
(336) 274-0011

Date: Fri, 11 Jun 1999
Subject: Clean Elections Act

To: Sen. Roy Cooper and members of the Judiciary Committee
Rep.s Baddour, Bonner and Alexander and members of the Election Law and Campaign Finance Reform Committee

From: Barbara Clawson
3208C Regents Park Lane
Greensboro, NC 27455

I strongly support SB 881, the Clean Election Act. I hope you will support this bill which ensures more adequate regulation of issue ads and better enforcement of election laws as well as an alternative way to finance campaigns. It is time to take action about campaign financing so that the voices of all citizens are heard in the election process.

Date: Wed, 16 Jun 1999

To: Sen. Roy Cooper and members of the Judiciary I Committee, and Rep. Phil Baddour, Rep. Martha Alexander, Rep. Donald Bonner, and members of the Election Law and Campaign Finance Reform Committee.

From: Mary Kiesau, Durham, North Carolina

Re: WE NEED CLEAN ELECTIONS AND CAMPAIGN FINANCE REFORM NOW

Campaign Finance Reform could be the single biggest thing to bringing "public" policy making back to the people. For years, BIG money and back-door politics have increasingly taken the power to govern and do public good *out* of the hands of our elected leaders and the voting citizenry and put *into* the deep pockets of every kind of industry and business that wanted to buy elections and votes.

This is serious business and it is corrupting every ounce of democracy our state government, state agencies and local governments try to uphold.

The Clean Elections Act contains some simple ways to publicly provide some consistency and fairness to elections, and to give more information and power to the people (where it belongs).

Please support, promote and work to pass the Clean Elections Act this session. It is long over-due.

Thank you.
Mary Kiesau
66 Crystal Oaks Ct
Durham, NC 27707

From: Mkentcurti@aol.com
Date: Fri, 11 Jun 1999

Senator Cooper and Members of the Judiciary Committee

Dear Committee Members,

I am writing to urge you to support the Gulley public finance bill now before you. There are 4 main reasons I support this bill.

First, we have a crisis of democratic legitimacy in which 3/4ths of respondents regularly tell pollsters our government is democratic in name only because special interests run things. This is a grave concern. The influence of money on elections is a major reason for this disaffection.

Second, as a teacher of Constitutional Law and Free Speech at Wake Forest School of Law I know that this reform is one of the few truly significant reforms that can be enacted under the Court's current reading of the First Amendment. Disclosure alone is important, but not enough.

Third, the campaign finance system limits free speech because it tends to keep basic issues off the agenda--those which would be most upsetting to large contributors.

Fourth, there is a basic trust relation between our representatives and the people. By democratic theory representatives represent the people--all of them. For politicians to be forced to raise more and more cash from a small segment of the electorate, threatens this fiduciary relation. Increasingly politicians are forced to spend time with big contributors and begin to think that their world view is that of most people, which of course is false.

This bill will not cure all our ills. The problem will require sustained attention for many years. We did not sink to our present low point overnight, and we will not quickly recover. Other problems need to be addressed, and new ones will become apparent. It is an important step in the right direction however.

I very much hope the members of the committee know the degree of cynicism and distrust that currently pervades our citizens. This is so among members of all social classes and all parties.

Thank you for your service to the public.

Best wishes,

Michael Kent Curtis
Greensboro, NC

June 15, 1999

Senator Roy Cooper
NC General Assembly
Raleigh NC 27601

Dear Senator Cooper:

Citizens across North Carolina who follow public policy are convinced that the time is right for passage of SB 882. The hidden costs of special interest money affects every part of our society and threatens the premises of a sound democracy.

Please exercise your proven leadership and support this legislation. North Carolina needs campaign finance reform, and SB 882 addresses problem areas. It will help control the spiraling costs of campaigns. It will encourage broad based citizen support for those candidates qualifying for public funds. It will free candidates to talk about the issues rather than continually chase campaign contributions.

SB 882 deserves advancement to the Appropriations Committee. Please help it along!

Sincerely,

Betty Ellerbee
6220 Lookout Loop
Raleigh NC 27612

Sen. Roy Cooper and members of the Judiciary I Committee
and
Rep. Phil Baddour and members of the Election Law
and Campaign Finance Reform Committee

Dear Gentlemen:

We write to support SB 882 and HB 1042.

There are so many reasons for supporting the Clean Elections Act that we hardly know where to begin, but let us emphasize just one of those reasons.

We'd be very happy if our elected representatives could devote full time to examining public policy issues and determining what's best for all the people of North Carolina. And we're confident that's exactly what members of the General Assembly would also prefer to do.

It's discouraging, then, for us to realize that our elected officials have to devote so much of their time and effort to conducting their election campaigns. We understand that legislators have to begin raising money for their next campaigns almost the day after being elected! That places a terrible burden on lawmakers – one we're sure they'd prefer not to have.

Therefore, we'd like to think of the Clean Elections Act as a Free Our Lawmakers to Do Their Real Business Act, and we urge you to do everything you possibly can to ensure its passage. Thank you.

Sincerely,

Jim and Shirley Jensen
207 Govan Lane
Cary, NC 27511

Love Your Computer

Putting the 'Personal' Back In Personal Computers

Chapel Hill, NC
Telephone: 919-968-7787 **E-mail**: lyc@digital4all.com **Fax**: 919-942-9626
WWW: http://www.loveyourcomputer.com

June 15, 1999

To the Members of the General Assembly,

I am writing to express my very strong support for the NC Clean Elections Act, and to urge you to lend your support to this important bill.

As a small business owner, I am keenly aware of the power money has to help communicate your ideas.

In the marketplace of business, this is as it should be. However, when it comes to our democracy, money's power and influence is not appropriate. This is one forum where all voices should be heard equally.

Sadly under the current system this is not the case. I am sure that you are all painfully aware of the skyrocketing costs of running a campaign. Not only does this put candidates without access to private wealth at a great disadvantage, it also affords those who are footing the bill for the campaigns -- large campaign donors -- an unfair advantage in the realm of politics and legislation.

The Clean Elections system is great because it provides a meaningful alternative to the current system. Because it is a voluntary program that would exist along side the current system of campaign financing, it is eminently fair. Those who do not want to participate may do so. However, for those who do participate, it will have a great deal of meaning indeed.

I ask you to pass this law, and give the voters of this great state a choice -- a choice they deserve. Give us all a fair chance at running a campaign that seeks the support of the voters without the time consuming money chase. Give us all a fair chance to vote for candidates that we would never question, never wonder if some of those big campaign checks made a bigger difference in a vote than our letters.

There is nothing to lose, and very much to gain. Right now you are all a part of this system, and are doing your best to work within it with honor and integrity. It is your place in history to be the ones to provide an alternative, a choice that will mean a great deal for generations to come.

Thank you,

Paul Rosenberg
616 Carl Drive
Chapel Hill, NC 27516

David Potorti
937 Pamlico Drive
Cary, North Carolina 27511
(919)461-2336
e-mail:reepo@earthlink.net

6/15/99

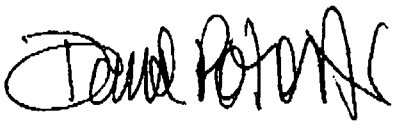
Dear Senator Cooper and members of the Judiciary 1 Committee,

I urge you to support The Clean Elections Act.

Democracy works only when the people are involved--and only when elected officials are involved with the people. The big money chase in which politicians like you must participate to remain competitive demands that you spend more time raising funds than identifying and dealing with public concerns. I imagine this must be as frustrating to you as it is to me.

I appreciate your experience and professionalism, and want your skills to be directed where they will do the most good--serving the interests of the people who elected you. As a voter, I have a right to expect nothing less. And after all, isn't this the reason you went into politics in the first place?

Please support The Clean Elections Act now.



ELLEN W. GERBER, ***Attorney at Law***

4202 Cilgerran Ct. High Point, NC 27265 ☎ 336-869-7340

June 10, 1999

The Honorable Roy A. Cooper, III, Chair
Judiciary 1 Committee
NC Senate

Re: Senate Bill 881—The Clean Elections Act

Dear Senator Cooper:

With great urgency, I write to urge you to support the Clean Elections Act. Nothing is more dangerous to our democracy than the corruption that has resulted from the need to buy and sell candidates.

This is a national problem and it is a North Carolina problem. The other night I watched the PBS show hosted by Bill Moyers that demonstrated clearly the ways in which money subverts the democratic process. Unfortunately, North Carolina provided him with an obvious example, the case of Cindy Watson.

Over the years I have worked on behalf of various candidates. Therefore I have become aware that each election cycle requires greater and greater sums for seats in the NC House and Senate. The only way to get enough money to run is to be rich or to take the money from the special interests who in turn expect special consideration. This state of affairs is just plain wrong.

The Clean Elections Act may not be perfect, but it will go a long way towards solving the problem. We must begin someplace. Please support The Clean Elections Act, SB 881, and please convey this message to other members of your committee.

Yours,

Ellen W. Gerber

NORTH CAROLINA

P.O. Box 10384
Raleigh, North Carolina 27605
(919) 469-0831

for a SANE world

formerly SANE/FREEZE

June 15, 1999

Honorable Roy Cooper
Majority Leader
State Senate
NC General Assembly
Raleigh, NC 27601

Honorable Patrick Ballantine
Minority Leader
State Senate
NC General Assembly
Raleigh, NC 27601

Honorable Phil Baddour
Majority Leader
State House
NC General Assembly
Raleigh, NC 27601

Honorable Richard Morgan
Minority Leader
State House
NC General Assembly
Raleigh, NC 27601

Dear Gentlemen:

On behalf of North Carolina Peace Action (NCPA), I write in support of SB-882 and HB-1042, the NC Clean Election Act. NCPA is a state affiliate of Peace Action, the largest national grass-roots peace organization, established in 1957.

You may wonder why NCPA support campaign finance reform at the state level. The answer is simple: we are most concerned about increased military spending and the growing power of the military-industrial complex which is fueled by the contributions of corporations benefiting from military spending. Our current system, at both the national and state levels, has turned wealth into the most influential factor in determining public policy and the allocation of public resources.

As leaders of the General Assembly, we urge you to take a stand to level the playing field in our state which in turn, will facilitate reform efforts at the national level.

The current election system rewards those who have resources and access to wealth and marginalizes the everyday citizen whose vote has become less important than the money supplied by corporation and the wealthy. This undermines our democracy.

The Clean Elections Act will help free candidates from a never-ending chase for money and help ensure all voters have a more equal voice in their government at all levels.

Sincerely,

William H. Towe

William H. Towe
NCPA Board
National Board Co-Chair

Resolution

Whereas spending on political campaigns for legislative and statewide races in North Carolina has skyrocketed in recent years;

Whereas the high costs of campaigning acts as a barrier to exclude many qualified candidates;

Whereas the increasing importance of private money in campaigns gives wealthy donors and special interests an unfair advantage over ordinary voters and diminishes the rule of "one person, one vote";

Whereas big donors can use their advantage to win public policies that harm the public good and add substantial costs for taxpayers;

Now, Therefore, Be It Resolved that we urge the N.C. General Assembly and Governor to enact a Clean Election program similar to those in states as diverse as Arizona and Massachusetts. Such a program provides a competitive amount of campaign money to state candidates who voluntarily (a) take no significant private donations, (b) demonstrate broad support from registered voters in the relevant district, and (c) agree to strict campaign spending limits. Such a program should be funded by closing tax loopholes or other means that result in no tax increase for the average taxpayer.

Approved by AARP Moore County Chapter 2564
Robert F. Lockwood Pres.

(include agency or organization name, address & contact, if appropriate)

On this day Feb. 16, 1999

(return to NCVCE, P.O. Box 1077, Carrboro, NC 27510 or fax to 919-967-7595)

Support Campaign Finance Reform

It makes good "cents"!

League of Women Voters of Charlotte-Mecklenburg

WHY? BECAUSE COST OF CAMPAIGNING FOR OFFICE IS SKYROCKETING AND WE'RE ALL PAYING FOR IT. According to Democracy South here's how:

Increased cost of state elections - -

The 170 winners of the 1998 election for State House and Senate spent a record $12 million to win their seats - - three times what was spent in 1992.

Fewer candidates are running for the state legislature - -

In the 1998 general election 35% of the candidates for the 170 seats for state House and Senate had no opposition.

More access for big contributors - -

"I don't think there's any way of getting around the fact. Legislators do respond to contributors, especially the larger contributors," Former Rep. Nick Jeralds (D-Cumberland)

Time spent raising money is not spent doing the people's business - -

Under the current system, successful candidates for governor in N.C. will have to raise well over $6 million or about $60,000 a week for the two years before the election - - $10,000 a day, excluding Sundays.

The voters, candidates and democracy all lose - -

Voter turnout has decreased at the same time that big money has overwhelmed elections.

HERE'S WHAT YOU CAN DO.

1. **Put a penny in an envelope.**

2. **Write "Support campaign finance reform. It makes good "cents", on the outside.**

3. **Mail the envelope with the penny inside to your legislator.**

For information: Althea Callaway, LWVCM 311, Wingrave, Charlotte, NC 28270, 704-442-0860, Fx:704-442-0960. Member N.C. Voters for Clean Elections Coalition.

Resolution

Whereas spending on political campaigns for legislative and statewide races in North Carolina has skyrocketed in recent years;

Whereas the high costs of campaigning acts as a barrier to exclude many qualified candidates;

Whereas the increasing importance of private money in campaigns gives wealthy donors and special interests an advantage over ordinary voters and diminishes the rule of "one person, one vote";

Whereas public policies influenced by the advantage and access of big donors can result in substantial added costs for taxpayers;

Now, Therefore, Be It Resolved that we urge the N.C. General Assembly and Governor to enact a Clean Election program similar to those in states as diverse as Arizona and Massachusetts. Such a program provides a competitive amount of campaign money to state candidates who voluntarily (a) take no significant private donations, (b) demonstrate broad support from registered voters in the relevant district, and (c) agree to strict campaign spending limits. Such a program should be funded by closing tax loopholes or other means that result in no new cost to the average taxpayer.

Approved by (include agency or organization name, address & contact, if appropriate): Carteret Co. Retired School Personnel (82 members) Harold V. Chartoff, V. P. P.O. Box 430 Newport, NC 28570

On this day

RESOLUTION FOR CLEAN ELECTIONS
IN NORTH CAROLINA

Whereas spending on political campaigns for legislative and statewide races in North Carolina has skyrocketed in recent years;

Whereas the high costs of campaigning acts as a barrier to exclude many qualified candidates;

Whereas the increasing importance of private money in campaigns gives wealthy donors and special interests an advantage over ordinary voters and diminishes the rule of "one person, one vote";

Whereas public policies influenced by the advantage and access of big donors can sometimes result in substantial added costs for taxpayers;

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Approved by Margaret R. Jones President

(include agency or organization name, address & contact, if appropriate) Save Our Rivers, Inc.
P.O. Box 122
Franklin, NC 28744

On this day June 15, 1999

Return to N.C. Voters for Clean Election, PO Box 1077, Carrboro, NC 27510 or fax to 919-967-7595

Resolution

Whereas spending on political campaigns for legislative and statewide races in North Carolina has skyrocketed in recent years;

Whereas the high costs of campaigning acts as a barrier to exclude many qualified candidates;

Whereas the increasing importance of private money in campaigns gives wealthy donors and special interests an unfair advantage over ordinary voters and diminishes the rule of "one person, one vote";

Whereas big donors can use their advantage to win public policies that sometimes harm the public good and add substantial costs for taxpayers;

Now, Therefore, Be It Resolved that we urge the N.C. General Assembly and Governor to enact a Clean Election program similar to those in states as diverse as Arizona and Massachusetts. Such a program provides a competitive amount of campaign money to state candidates who voluntarily (a) take no significant private donations, (b) demonstrate broad support from registered voters in the relevant district, and (c) agree to strict campaign spending limits. Such a program should be funded by closing tax loopholes or other means that result in no tax increase for the average taxpayer.

Approved by (include agency or organization name, address & contact, if appropriate)

Mitchell K. Huggins, Pres. L 959

United Steelworkers Local 959

280 McCloskey Road, Fayetteville, NC 28311

On this day June 16, 1999

(return to N.C. Voters for Clean Elections, PO Box 1077, Carrboro, NC 27510 or fax to 919-967-7595)

Resolution

Whereas spending on political campaigns for legislative and statewide races in North Carolina has skyrocketed in recent years;

Whereas the high costs of campaigning acts as a barrier to exclude many qualified candidates;

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Approved by (include agency or organization name, address & contact, if appropriate): Penny Faulkner, President
Carteret County Democratic Women (104 members)
3607 Justin Ct. Morehead City, NC 28557

On this day: 23rd day of February, 1999

Resolution in Support of the NC Clean Election Act

Whereas *spending on political campaigns for legislative and state-wide races in North Carolina has skyrocketed in recent years;*

Whereas *the high costs of campaigning acts as a barrier to exclude many qualified candidates;*

Whereas *the increasing importance of private money in campaigns gives wealthy donors and special interests an advantage over ordinary voters and diminishes the rule of "one person, one vote";*

Whereas *public policies influenced by the advantage and access of big donors can result in substantial added costs for taxpayers;*

Now, Therefore, Be It Resolved *that we urge the N.C. General Assembly and Governor to enact a Clean Election program similar to those in states as diverse as Arizona and Massachusetts.*

Such a program provides a competitive amount of campaign money to state candidates who voluntarily:
(a) take no significant private donations,
(b) demonstrate broad support from registered voters in the relevant district, and
(c) agree to strict campaign spending limits. Such a program should be funded by closing tax loopholes or other means that result in no tax increase for the average tax payer.

Approved by Charlotte Friends Meeting Denny Fernald, Clerk
Charlotte Friends Meeting by Denny Fernald, Clerk
(include agency or organization name, address & contact, if appropriate)

P.O. Box 561793 - 370 W. Rocky River Rd.
Charlotte, NC 28256-1793

On this day March 27, 1999

If you would like to help make this vision of a cleaner campaign system a reality for North Carolina, please ask your local governments, churches and civic organizations and friends to adopt this resolution and return it to Common Cause/North Carolina at the address below.

[redacted] contributions to Common Cause/NC so that we may continue to work for this and other good government issues are al[redacted] welcome.

COMMON CAUSE/NORTH CAROLINA
Box 482, Raleigh NC, 27602, 919/834-4509
Contact the Executive Director, Carol Love, at carolove@aol.com.

Resolution

Whereas spending on political campaigns for legislative and statewide races in North Carolina has skyrocketed in recent years;

Whereas the high costs of campaigning acts as a barrier to exclude many qualified candidates;

Whereas the increasing importance of private money in campaigns gives wealthy donors and special interests an advantage over ordinary voters and diminishes the rule of "one person, one vote";

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Approved by (include agency or organization name, address & contact, if appropriate)

Albert Stein Dembo Lodge of B'nai B'rith
c/o: Harvey Rubnick, DPP
PO Box 58351, Fayetteville, N.C. 28305-8351

On this day May 5, 1999

Resolution in Support of the NC Clean Election Act

Whereas *spending on political campaigns for legislative and state-wide races in North Carolina has skyrocketed in recent years;*

Whereas *the high costs of campaigning acts as a barrier to exclude many qualified candidates;*

Whereas *the increasing importance of private money in campaigns gives wealthy donors and special interests an advantage over ordinary voters and diminishes the rule of "one person, one vote";*

Whereas *public policies influenced by the advantage and access of big donors can result in substantial added costs for taxpayers;*

Now, Therefore, Be It Resolved *that we urge the N.C. General Assembly and Governor to enact a Clean Election program similar to those in states as diverse as Arizona and Massachusetts.*

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(b) demonstrate broad support from registered voters in the relevant district, and
(c) agree to strict campaign spending limits. Such a program should be funded by closing tax loopholes or other means that result in no tax increase for the average tax payer.

Approved by Listening and Diversity Project
(include agency or organization name, address & contact, if appropriate)
278 White Oak Creek Rd.
Burnsville, NC 28714

On this day 3-29-99

If you would like to help make this vision of a cleaner campaign system a reality for North Carolina, please ask your local governments, churches and civic organizations and friends to adopt this resolution and return it to Common Cause/North Carolina at the address below.

[redacted] contributions to Common Cause/NC so that we may continue to work for this and other good government issues are al[redacted]welcome.

COMMON CAUSE/NORTH CAROLINA
Box 482, Raleigh NC, 27602, 919/834-4509
Contact the Executive Director, Carol Love, at carolove@aol.com.

Resolution in Support of the NC Clean Election Act

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Approved by Peace and Social Concerns Committee
(include agency or organization name, address & contact, if appropriate)
Chapel Hill Friends Meeting
531 Raleigh Rd., Chapel Hill, NC 27514

On this day 4-25-99

If you would like to help make this vision of a cleaner campaign system a reality for North Carolina, please ask your local governments, churches and civic organizations and friends to adopt this resolution and return it to Common Cause/North Carolina at the address below.

[redacted] contributions to Common Cause/NC so that we may continue to work for this and other good government issues are al[redacted] welcome.

COMMON CAUSE/NORTH CAROLINA
Box 482, Raleigh NC, 27602, 919/834-4509
Contact the Executive Director, Carol Love, at carolove@aol.com.

Money chase threatens democracy

Public financing of campaigns offers the best way to ensure fair elections

By Robert B. Morgan
GUEST COLUMNIST

It's time to sound the alarm. Unless we take action now, I fear we risk losing our democracy. High-cost elections and wealthy special interests are literally pricing out the ordinary citizen. If Jane or John Doe can't afford to be a candidate, or even a constituent, we can no longer claim to have government of, for and by the people.

I have run in 18 primary and general elections, from clerk of Superior Court to U.S. senator, and I confess that I wouldn't have the nerve to run for public office today because of the tremendous amount of money required to win.

Some candidates for the General Assembly now raise three times what I spent for a statewide race for attorney general. I can understand why talented people, with a desire to serve the public, do not feel like running for office. They are simply driven away by the prospect that to succeed they must spend a great deal of time chasing after large donations.

There is a second way the average person is squeezed out by this money chase. I do not believe a candidate who receives a sizable campaign contribution is selling his or her vote. But I've been there. I've held office in Raleigh and in Washington, and I know that it is hard not to listen to the contributor's representatives whenever they come calling. I also know that most citizens do not have that kind of access to a legislator.

People see that the cash constituent counts more than the voting constituent, and it doesn't just make them mad. It makes them feel powerless and, in too many cases, it pushes them away from politics altogether. It turns hopeful voters into cynical nonvoters. As the amount of money spent on elections has sky-rocketed, voter participation has actually declined.

What can be done to weaken the grip of big money over politics and put voters back in the center of our democracy? The U.S. Supreme Court says we can't just shut off the supply of special-interest cash or put a mandatory lid on how much candidates can raise and spend.

ROBERT MORGAN: He says elections should belong to the voters.

But we can create an alternative supply of "clean money" to reward the candidates who spend their time soliciting support from ordinary citizens instead of from wealthy contributors. If enough voters agree, the candidate can get a competitive amount of campaign money from a publicly funded clean-election fund.

Yes, this is public financing of campaigns. I don't like the idea of tax money paying for elections, but I find no other solution. We pay for the balloting process with our taxes, and if we want a fair election system, we must also pay for a program that gives candidates who voluntarily reject special-interest donations a fair chance to succeed.

In the past month, more than 50 members of the General Assembly have sponsored a bill to set up such a program under the N.C. Clean Election Act. This diverse group of legislators includes conservatives, moderates and liberals who all recognize that the money chase is threatening the integrity of fair elections in North Carolina.

They include Reps. Martha Alexander, Alma Adams, Walter Church, Beverly Earle, Wayne Goodwin, Dewey Hill, Mary Jarrell, Maggie Jeffus, Martin Nesbitt, Pete Oldham, Ronnie Smith, Larry Womble and Doug Yongue as well as Sens. Wib Gulley, Kay Hagan, Ellie Kinnaird, Howard Lee, Bill Martin, Beverly Perdue, Jim Phillips, William Purcell and Ed Warren.

These lawmakers deserve our thanks. They aren't just saying there is a problem; they are taking the initiative to support innovative solutions. The N.C. Clean Election Act gives voters veto power over who can receive their tax money. It makes the candidate work hard to get hundreds of registered voters to donate $15 to $75 apiece, as evidence that they approve releasing public money. The candidate must also sign a legally binding pledge to take no special-interest money and accept strict spending limits.

This program offers hope for our democracy — a way for voters to have real ownership of elections and for candidates to free themselves from the grip of wealthy, special-interest donors. Other states have begun similar programs. I wish we could put one in place in North Carolina right away and reduce the threat of big-money politics. But I know it will be a hard fight.

Of course, nobody said defending democracy would be easy. In fact, its vitality depends on our alert action. Let's get more involved, not squeezed out.

■ *Morgan, an attorney in Lillington, has served North Carolina as a state legislator, attorney general, U.S. senator and director of the State Bureau of Investigation.*

This column has appeared in numerous other newspapers across the state. The paragraph with names of legislative sponsors was changed to highlight local members of the General Assembly.

Wednesday
June 9, 1999

NAACP Backs Clean Election Act, Predatory Lending Bill

Raleigh -- Members of the N.A.A.C.P. came to the General Assembly today to promote bills they support.

The 50 members of the civil rights organization pressed lawmakers to regulate unfair lending practices aimed a poor people. They also want additional funding to help remedial children if so-called social promotions are eliminated from schools.

Also on their agenda is the passage of the Clean Election Act, a bill to provide public financing for election campaigns of candidates who receive voter approval.

The Rev. George Allison, executive director of the state N.A.A.C.P. said, "Too often the best students are not able to advance to graduate school simply because they don't have the money. Wealth has increasingly become a barrier in the political arena as well. Too often the best candidates – those with real support in their districts – can't even run for office because that lack access to the funds needed to mount an effective campaign.

"We effectively have a 'wealth primary' today that excludes candidates of modest means from serving their communities. This must end," he said.

ASHEVILLE
CITIZEN-TIMES

Dedicated to the Upbuilding of Western North Carolina
1870-1999

A GANNETT NEWSPAPER

Tuesday, May 18, 1999

EDITORIAL

Clean Elections Act a needed reform for coming millennium

Disillusioned, disenfranchised, disinterested. That's how millions of Americans have come to feel about their government.

Voters are staying away from the polls in droves. According to the non-profit, non-partisan research group, the Committee for the Study of the American Electorate, since 1960 in Presidential elections and 1966 in mid-term elections, voter participation has fallen more than 25 percent nationally and more the 30 percent outside the South. It's the largest and longest such slide in the nation's history. Twenty-five million Americans who used to vote don't anymore, according to the committee.

And its not just voters, but potential candidates, as well, who are turning their backs on the political process.

Many qualified, principled candidates never seek office above the lowest levels because they are unwilling to sell their votes to the highest bidder. But without special interest contributions they know they would not have the money to buy the advertising and the exposure they would need to win.

Something must be done to change the way campaigns are financed if voters are to become convinced their participation in an election makes a difference.

State Rep. Martin Nesbitt, D-Buncombe, is one of the four main sponsors of the N.C. Clean Elections Act, a bill that will change the way elections are financed in North Carolina if it becomes law. The bill is similar to a senate bill introduced by Sen. Wib Gulley, D-Durham.

The bill would provide state funding for candidates who agree to run as clean election candidates. Such candidates would have to raise a minimum number of $15 donations from individual donors – 250 for the state House, 500 for the state Senate, 2,750 for Council of State, 4,000 for lieutenant governor or attorney general, 7,000 for governor. (The program would only be open to candidates for those offices.) If successful, the candidate would receive from the state coffers an average of the amount the two top vote getters spent in the last two elections for that office.

The cost per election to the state would be under $14 million, less than 1/1000th of the state budget, according to the the state's fiscal staff.

The candidates would agree to raise no private funds beyond the qualifying donations; accept a total spending limit; use the funds only for campaign purposes; return any unused funds to the Clean Election Fund.

In other words, candidates would be financed by voters and taxpayers instead of special interests.

The bill has 33 sponsors in the House and 18 in the Senate, including Sens. Charles Carter and Steve Metcalf, both Buncombe County Democrats. It's unlikely to become law this year, but if passed during the 2000 short session, would affect the 2002 elections.

It's important to let your legislators know that you want this bill to become law. It's time to stop being a government of special interests and return to being a government of the people.

JOURNAL
WINSTON-SALEM, N.C.

NOV 15 '98

Public funds for campaigns will ensure public service

Under the present system, candidates are either wealthy or dependent on those who are

With control of the N.C. House changing from Republican to Democratic hands, a few high-minded legislators feel the time may now be right to push for real and meaningful campaign-finance reform. I hope they're right.

In 1996, candidates for the General Assembly spent $14.1 million on their campaigns — up 76 percent from what was spent in 1994. The numbers for the most recent election aren't in yet, but spending this year is expected easily to exceed the 1996 total. Gov. Jim Hunt spent $10.4 million to win his fourth term in 1996.

Michael Biesecker

You don't have to be a careful political observer to know that the "Golden Rule" trumps all other considerations in Raleigh. The cozy relationship between big-money lobbyists and our elected officials borders on bribery. Look at who pays for political campaigns, and you'll see plenty of bankers, road pavers, construction contractors and hog farmers — folks with direct financial interests in the decisions made by the politicians who take their money.

Sen. Wib Gulley, a Durham Democrat, sponsored legislation two years ago to provide public financing to candidates who agree to limit their campaign spending. The bill eventually led to tougher standards for disclosure of contributions, but public financing died fast. Gulley, who sees the Nov. 3 election results as a mandate for change, held a press conference Monday to announce that he plans to try again.

The current system allows only two options for candidates who need money — soliciting private contributions and personal wealth. Gulley's proposal, based in large part on systems used in states such as Maine, Vermont, Minnesota and Massachusetts, would provide an alternative source for funds to candidates who choose not to be beholden to special interests.

Because of the U.S. Supreme Court's ruling that campaign cash is a form of constitutionally protected free speech, there is no way to outlaw private financing, even if there is a naked expectation of *quid pro quo*. But given the choice, many officeholders would undoubtedly turn their backs on lobbyists if there were another option. The trick is to make public funding more attractive than private funding.

To qualify for public money under Gulley's proposal, a candidate would have to collect a fixed number of signatures and $5 contributions to demonstrate public support for his candidacy. Candidates who choose to take public money would be required to limit their campaign spending to a pre-determined "average" cost for the race and not accept private contributions. If a publicly funded candidate is outspent by a privately funded candidate, some additional funds will be made available to level the playing field.

SUCH A SYSTEM would enable any qualified citizen to run for state-level elected office without wealthy contributors or special-interest money. It would also ensure a more diverse ballot.

Some people will no doubt find the prospect of paying for political campaigns with tax dollars distasteful — I certainly did.

But why would some of our state legislators spend upwards of $400,000 to win a job that pays $13,000 in salary? Campaign "donations" are bought and paid for with special favors that cost us far more than what it'll cost to fund campaigns.

With a state budget of more than $12 billion, it would cost less than a tenth of 1 percent of the total budget to publicly fund every state-level political campaign. Considering the money that might be saved once financially independent legislators start cutting special-interest pork out of the budget, funding campaigns could be a bargain for taxpayers. A recent poll of 400 North Carolina voters suggests that a majority of citizens would be behind such a system if it cleaned up politics — 61 percent said public financing of political campaigns would be a "good idea."

No longer would the decisions of where to build new roads be made by those who send tribute to the governor. Legislators wouldn't make decisions that affect our daily lives over a $25 steak bought by a lobbyist. They'd be no motivation to award government contracts only to generous campaign contributors.

Buying back our government from big-money special interests will be expensive, but if it rocks the politics-as-usual *status quo*, it'll be worth every penny.

And the prospect of a needy politician, hat in hand, knocking on my door for five bucks and a John Hancock doesn't sound half bad. Such a grass-roots reliance on the public might finally ensure a representative democracy that represents people like me.

■ *Biesecker is the* **Journal's** *editorial assistant.*

NEWS - RECORD
GREENSBORO, N. C

DEC 29 98

In Raleigh, a new chance to clean up campaigning

● Campaign finance reform is more urgent than ever.

Like their counterparts in Congress, Republican leaders in the state House of Representatives did their best over the past two years to kill campaign finance reform and keep the big bucks flowing in state politics. But Republicans lost their hold on the House in last month's elections, and the fortunes of politics now favor reform.

When lawmakers reconvene next month in Raleigh, they must seize the moment and begin cleaning up an election system increasingly beholden to the special interests bankrolling state campaigns.

Two solid proposals for reform await legislators.

The first would cut in half the amount of money contributors may give to state political campaigns. It also would ban "soft money" — the unlimited contributions that special interests pour into political parties to circumvent limits on giving to individual candidates. The state Senate, under Democratic control, passed that measure twice in the past two years — only to watch it die in the House.

The second proposal, called the "Clean Elections Act," would offer public money to candidates who agree to accept strict spending limits, take no significant private contributions and demonstrate strong support in their districts by raising a certain number of small donations from voters. Last month, voters in both Arizona and Massachusetts passed their own versions of that initiative. Two other states — Maine and Vermont — approved publicly funded campaigns earlier.

Some legislators dismiss the Clean Elections Act as "welfare for politicians." That's a cute sound bite, but it distorts the issue. Funding campaigns with public money would help keep state government clean and responsive — and that's a wise investment for ordinary taxpayers.

Hog feeders, bankers, insurance companies and other special interests don't give to candidates out of the goodness of their hearts. They expect a return on the investment — special access to lawmakers, expensive tax breaks, legislative favors.

Public campaign financing comes with no strings attached. Candidates are beholden first and last to the taxpayers. That's the way it ought to be.

The current system for financing campaigns in North Carolina is eroding the integrity of the legislature. It's pushing the cost of campaigning higher with each election, putting public office farther and farther out of the reach of ordinary working people. It's giving special interests greater and greater influence over the political process, allowing them to drown out the voices of ordinary voters.

Next month, legislators get another chance to change it, and they must not let it pass them by.

THE NEWS & OBSERVER
MONDAY, FEBRUARY 1, 1999

I advise and enjoin those who direct the paper in the tomorrows never to advocate any cause for personal profit or preferment. I would wish it always to be "the tocsin" and to devote itself to the policies of equality and justice to the underprivileged. If the paper should at any time be the voice of self-interest or become the spokesman of privilege or selfishness it would be untrue to its history.

— from the will of Josephus Daniels, Editor and Publisher 1894-1948

Right time for reform

The numbers clearly show that big money's influence on political races in North Carolina is way out of hand. Democrats' newly won control of the General Assembly gives them a golden chance to rein it in.

In laying out their agenda for 1999, state legislators might take some direction from a new report out of Chapel Hill. Its message — that the unseemly link between big bucks and political victory is stronger than ever — isn't novel, but the General Assembly's new Democratic majority gives lawmakers an unusual and valuable opportunity to respond.

According to the watchdog group Democracy South, legislative candidates outdid themselves last year in building — and using — campaign treasuries. All together, winning candidates spent a record $12 million on their bids for office — three times the amount spent in 1992. Winners' average expenditure was $53,090 in the House and a formidable $112,172 in the Senate.

Fierce competition between the parties fueled the financial arms race, which also seems to reflect the Mount Everest syndrome: A big reason politicians raise so much money is that it's there. Unburdened by regulations on contributions to political parties and committees, wealthy individuals and special-interest groups eagerly spread their riches around, often in the well-founded hope that the favor will be returned.

Incumbents usually benefit the most, since re-election is the norm and since they already have legislative leverage. Candidates' increased reliance on high-priced political consultants also drives campaign costs ever higher, as does their dependence on expensive television advertising.

Every year the self-perpetuating cycle of raising and spending money occupies more of politicians' time, distracting them from the work they were elected to do. It also prevents many people who would be excellent public servants but don't have access to piles of money from entering politics. Finally — and understandably — it sours citizens on the political process: It's hard for many to believe that democracy is really working, and that their vote makes a difference, when money dominates elections.

For each of big money's corrosive effects, however, there's a remedy. The one North Carolina (and the country) needs most acutely is a ban, or at least a limit, on unregulated, soft-money gifts to political parties and committees

Unless the U.S. Supreme Court revisits its problematic 1976 ruling equating campaign spending with free speech, incentives may be the only way to bring those expenditures under control. A "clean elections" bill championed by Sen. Wib Gulley, a Durham Democrat, would provide public money to candidates who voluntarily observe spending and contributions caps. Voters in several other states have approved similar arrangements; North Carolina should be next.

Far-reaching campaign-reform proposals like Gulley's bill didn't stand a chance as long as Republicans controlled the state House. But now, with both chambers of the General Assembly in the hands of Democrats, who are generally more supportive, prospects have never been better for reform. Legislators ought not let that chance slip away

Campaign spending is getting out of control; changes needed

An Associated Press story out of Raleigh brought some shocking news about the apparent cost of getting elected to the North Carolina General Assembly.

The story, citing a study of campaign finance record, told us that the 170 legislators who took the oath of office Wednesday for new terms spent over $12 million getting elected. That amount, according to Democracy South, a campaign finance research and advocacy group, is more than triple the $3.9 million spent on campaigns in 1992.

The average winner of a House seat, says the study, spent $53,090 in 1998, while the average Senate winner spent $112,172. That compares to 1996 averages of $41,982 for a House seat and $81,288 for a Senate seat.

Thirty-six lawmakers spent more than $100,000 on their campaigns, compared with 23 in 1996 and only two in 1992.

You have to wonder, first, where that kind of money comes from, and second, what are people really after who are willing to divvy it up, including both the legislators and their money donors.

"This is serious money," said Bob Hall of Democracy South.

"It's the kind of money that chases away good candidates and gives an advantage to wealthy donors who have a very narrow interest that often is not the same as the public interest."

Hall thinks that the continuing escalation of campaign costs—and the public disclosure of it—should prompt further calls for public financing of campaigns.

"It is time for a change," he said. "It's out of control."

We agree, on both counts.

The Charlotte Observer

EDITORIALS

Campaigns out of control

Escalating cost of N.C. legislative seats must be reined in

Two-party politics has brought some good things to North Carolina — fresh ideas, new blood, a different way of doing things and the assurance that when the majority does anything amiss, there will be a vigorous watchdog barking from the sidelines.

This new competition has an ugly side, too: It has driven the cost of state legislative seats beyond imagination. No so long ago, a candidate with $100,000 could mount a successful campaign for Congress. Nowadays, it can easily take that much to win a legislative seat in Raleigh, according to an analysis of 1998 spending practices by Democracy South, a group that monitors election campaigns.

The group found that the cost of winning a seat in the legislature increased by nearly one-third over 1996 — and has tripled since 1992. In 1998, winners of House seats spent an average of $53,090, while winners of Senate seats spent $112,172. In 1998, 36 legislative winners spent more than $100,000, compared with 23 just two years earlier. Democracy South found that every candidate who spent at least $150,000 won. That sets the bar for the 2000 legislative races: If you want to win, plan on raising and spending at least that much money.

This development ought to alarm every citizen who thought this state retained a citizens' legislature. If it takes a ton of money to win a seat, only those candidates who have a ton of money, or who can raise it, can afford to be a member. Who looks out for the ordinary citizen in a system where the corrosive influence of money controls the legislative membership?

North Carolina needs to reform its campaign finance practices. Unless state legislators come up with a practical and constitutional way to do so, the General Assembly will become the province solely of the high rollers.

Fortunately, 1999 ought to be a productive year for campaign finance reform. Both Senate President Pro Tem Marc Basnight, D-Dare, and House Speaker Jim Black, D-Mecklenburg, promise a fair hearing. Good. In the last session, only the Senate was interested in taking bold steps. The House, which improved campaign finance disclosure requirements in 1997, did not want to go further last year.

Among the proposals the legislature will consider is a voluntary program for public financing of campaigns. Candidates who agree to limit their fund-raising would be eligible for significant public funding. Other proposals include reducing the maximum amount of individual campaign contributions to match the $1,000 limits in federal elections, and reducing the influence of soft money — huge contributions funneled to candidates through political parties.

The issue is complicated because of a pending federal case testing North Carolina's way of regulating campaigns. That decision in the 4th Circuit Court of Appeals in Richmond may be issued soon, and will help legislative leaders focus their strategy. They should start planning now. When legislative seats require North Carolinians to spend a fortune to win, democracy loses out to moneyed interests.

THE NEWS & OBSERVER
SUNDAY, MAY 9, 1999

I advise and enjoin those who direct the paper in the tomorrows never to advocate any cause for personal profit or preferment. I would wish it always to be "the tocsin" and to devote itself to the policies of equality and justice to the underprivileged. If the paper should at any time be the voice of self-interest or become the spokesman of privilege or selfishness it would be untrue to its history.

— from the will of Josephus Daniels, Editor and Publisher 1894-1948

Return to sender

A controversy over campaign gifts from a former rest home mogul points to North Carolina's need for stricter rules on political contributions, and for public financing of campaigns.

As owner of the state's largest rest home chain, A. Stephen Pierce kept a close watch on government regulation and doubtless wanted to make sure his industry's side was heard when the time came to set the rules for rest homes. So he did what many other business leaders do: He doled out campaign contributions to influential lawmakers and office-holders.

But Forsyth County District Attorney Thomas Keith says that Pierce, who sold his chain in October 1997, was a little too generous when it came to some politicians, specifically Governor Hunt, Lieutenant Governor Wicker and state Sens. Betsy Cochrane of Advance and Beverly Perdue of New Bern. State law permits individuals to make contributions of up to $4,000 for each election in a cycle — primary, runoff and general — and Keith says a State Bureau of Investigation probe showed that Pierce had used family members, friends and his employees to donate his money to campaigns in their names. Keith issued a warrant for Pierce's arrest in March of last year (Pierce lives in Forsyth County) based on information about his contributions to Perdue, though a trial has not been held.

In letters to these officials, as reported in The News & Observer, Keith has notified them that they should forfeit slightly more than $100,000 in contributions (all told) that the district attorney alleges were illegal gifts. Wicker was asked for $55,000, Perdue for about $20,000, Hunt for $16,000 and Cochrane for $11,000. The money would go to the State Board of Elections for the state's General Fund. Each official intends to comply with the request.

Perdue, who has ambitions to be lieutenant governor, went further: "This shows," she said, "the problems we're going to have with raising so much money for our campaigns. There has to be some type of different ways to fund campaigns." She was speaking of some form of public financing.

Though Keith was careful to say that none of the four "knowingly received" illegal contributions, the fact is that Perdue's reference to the big money needed for statewide campaigns implies the obvious: The more money that is raised, the greater the likelihood that problems and questions will arise over contributions.

A public financing system in some form clearly would lessen the risk of such problems, though it's an idea to which powerful incumbents with name recognition among political action committees (read that: deep-pocket contributors) tend to be dragged kicking and screaming. More and more, money is the premium fuel for political campaigns, and that inevitably leads the average citizen to feel that those "premium" contributors have almost exclusive influence with elected officials. Public financing — campaigns running on regular, so to speak — would give the average citizen more of a voice.

JEFFERSON POST
WEST JEFFERSON, N. C.

MAR 02 99

Campaign finance issue needs attention

Guest Column

by Pete Wal

On February 24 I attended a speech by State Senator Wib Gulley on campaign finance reform.

He spoke about the problems involved in our campaign finance system and about a solution he has proposed, the North Carolina Clean Elections Act. The problems is obvious, to be able to mount a reasonable campaign for public office one must either be wealthy or indebted to wealthy individuals and corporations through campaign donations. And the cost of running a campaign in North Carolina has gone up 300% since 1992.

We've had to read about the disgusting influence of campaign money in Governor Hunt's infamous DOT scandal. We've heard on end about how North Carolina's banks receive $54 million each year in a tax loophole, all the while pumping $1 million annually into political campaigns. Can we honestly believe that corporations and wealthy campaign donors give thousands upon thousands of dollars each year and yet are getting nothing in return?

How can the average person, who can't put thousands of dollars into a campaign and refuses to take money from wealthy donors, possibly mount a serious campaign for political office? With passage of Senator Gulley's Clean Elections Act it would be possible, and perhaps we could begin to lure back some of the disconnected and disgusted voters.

Senator Gulley's proposal is to provide the public financing of political campaigns in North Carolina after a candidate can show a reasonable base of support through small private donations. Wealthy special interests have bought our political system out from under us, and now we must buy it back- and let our money insure that North Carolina's voter will be a politician's only special interest.

Charlotte Observer FOR THE RECORD 12/9/98

Reform campaign finance

From a column by state Sen. Wib Gulley, D-Durham:

Last month, voters sent a strong message: They want elected officials to be more accountable to them and less dependent on the special-interest donors.

In North Carolina, John Edwards beat U.S. Sen. Lauch Faircloth with a promise to serve ordinary citizens and "never take a dime from a PAC or Washington lobbyist." In Wisconsin, voters rewarded U.S. Sen. Russ Feingold's courageous decision to limit his campaign spending and reject support from "soft money" donors. His opponent vastly outspent him, but by making campaign finance reform a central issue, he won.

Gulley

In Florida, voters added their public-financing system for statewide candidates to their constitution, giving it greater stability and a permanent source of money.

Finally, in Arizona and Massachusetts, voters approved ballot measures that will create Clean Elections programs similar to the ones already approved in Maine and Vermont. Candidates can receive a set amount of money from a publicly financed Clean Election Fund if they accept strict spending limits, demonstrate strong support from their districts' voters, and agree to take no significant private donations.

People are tired of seeing wealthy contributors get tax breaks, subsidies, and enhanced access to elected officials. They see the cost of political campaigns going up, and don't like the results — more negative ads, fewer successful candidates with modest incomes, and bigger checks written by contributors who expect a return on their "investment."

More and more people recognize that they could actually save tax money with a program that offers public funds to qualified candidates who do not rely on special-interest donors to get elected.

A national polling firm asked N.C. voters their opinion. By big majorities, North Carolinians favored strong measures to regulate bogus "issue ads" and close a loophole that allows unlimited "soft money" donations to influence elections. They also endorsed the basic principles of the proposed N.C. Clean Election Act. Candidates who enroll in this voluntary program, as the wording in the poll states, "would no longer raise money from private sources" and "would be limited [to spend only] a set amount of money from a publicly financed election fund."

The U.S. Supreme Court has ruled it is unconstitutional to force candidates to limit their campaign spending; however, the court also said states can offer incentives to encourage candidates to accept limits voluntarily.

Over the past 25 years, state and federal lawmakers have tried many ways to limit or contain the big private money flowing into our elections. These efforts have one thing in common — they all failed. Spending on elections is higher than ever, yet voter turnout is at historic lows.

This situation will not change until we offer candidates a way to voluntarily limit their spending and reject the lure of special-interest money. As a state, we must establish a program that gives candidates a real alternative — the option of running a clean campaign with clean money.

That's why I will again introduce the N.C. Clean Election Act in the General Assembly in 1999. The message from November is loud and clear.

THE NEWS & OBSERVER
THURSDAY, NOVEMBER 12, 1998

I advise and enjoin those who direct the paper in the tomorrows never to advocate any cause for personal profit or preferment. I would wish it always to be "the tocsin" and to devote itself to the policies of equality and justice to the underprivileged. If the paper should at any time be the voice of self-interest or become the spokesman of privilege or selfishness it would be untrue to its history.

— from the will of Josephus Daniels, Editor and Publisher 1894-1948

Cleaning up elections

A proposal that would help put the financing of North Carolina elections back in the hands of ordinary citizens seems likely to get a close look. As it stands, money from private contributors can play an undue role.

North Carolina's 1998 elections offered many examples of the influence of big money and the outrageous cost of running for office. So it's good to see that Democratic state Sen. Wib Gulley of Durham — emboldened by his party's success at the polls — plans to revive a reform effort involving public financing of campaigns.

Public financing — in which taxpayers cover most costs for candidates who voluntarily agree to spending and contributions limits — would not solve all the problems related to special interests' influence on elected officials, but it would be a good start. With voters in Massachusetts and Arizona having just approved similar measures, four states now have acted to shore up ordinary citizens' proper role in elections. North Carolina ought to take a close look at developments in those states with an eye toward applying the best aspects of their plans here.

Gulley's so-called clean-elections proposal would cost Tar Heel taxpayers on the order of $12 million a year, but there's money to be saved in reducing the ability of corporations and special interests to wangle tax breaks and lax regulations. Public financing (envisioned initially for statewide and legislative offices) also could make a real difference in helping people without access to huge amounts of private money run for office. And by requiring candidates who chose to accept public funds to gather a set number of small donations from individuals, it would promote face-to-face interaction between vote-seekers and citizens, possibly re-engaging many in a process they dropped out of long ago.

Unfortunately, that seems to be the last thing some politicians want. Witness state Rep. David Miner, a recently re-elected Cary Republican who brags that he didn't knock on a single constituent's door during his campaign. Thanks to developers, business leaders and others who poured money into his campaign coffers, Miner was able to avoid pounding the pavement by sinking almost $320,000 into saturating the airwaves with ads and the mail with fliers. And that was just as of the most recent reporting deadline.

Meanwhile, Miner's Democratic opponent, Linda Gunter, who raised only about $43,000, wore herself out shaking hands and listening to voters. Most likely she developed a better understanding of voters' concerns — but it didn't matter against Miner, who almost seems to hold the electorate in contempt.

Gulley's clean-elections proposal wouldn't directly address the high cost of media campaigning that played such a role in that race, but it would help equalize the kind of financial imbalance that hindered Gunter. Along with a ban on unregulated contributions to political parties, better disclosure of campaign gifts and other elements of reform, it would go a long way toward restoring public confidence and participation in the electoral process — and thus strengthen Tar Heel democracy.

VISITOR REGISTRATION SHEET

Senate Judiciary I — 6-17-99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leigh Bradley	133 Weatherhill Pointe, Carrboro/NC Alliance for Democracy
Dock Terrell II	7830 Massey Chpl. Rd. Durham/NC Alliance
Michael Rubiron	N.C. Commoners Council, Inc. 3256 Lewis Farm Rd Raleigh NC 27607
M.B. Hardy	(Same) 1020 W. South St. — " — NC 27603
Harrell Chotas	1409 Alabama Ave Durham, NC 27705
Cam Cowan	BPMHL
Nancy Mills	161 Kensington St., Lumberton NC 28358
Peter Walz	510B Oak Ave Carrboro NC 27510/Voters for Clear Elections
Wm Warren Murphey	108 FOREST MANOR DR, GARNER 27529 CC NCAD
Carol Lowe	Common Cause/NC
Dick Logan	NCAD + NC Fair Share
Lee Mortimer	Center for Voting + Democracy
Matt Allen	101 Thomas Lane, Apt E4 Carrboro / NC Alliance for Democracy
Gayle Pignone	Creedmoor, NC / NC Alliance for Democracy
David Petart	NCAD
Gordon Smith	member of the Newlerty / Raleigh NC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Bob Hall	Democracy Smith

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 22, 1999

The Senate Judiciary I Committee met on June 22, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Clodfelter to explain **Senate Bill 1025 – 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.**

Judge Thomas Ross, Director of the Administrative Office of the Courts, was recognized to answer questions from the Committee and comment on the bill.

Senator Clodfelter was recognized to amend the bill on Page 2, Line 5, Page 4, Line 32 and Page 4, Line 36. The motion carried by a majority voice vote.

Mike Crowell, with the Future of the Courts Commission, was recognized to speak on the bill.

Senator Gulley moved to give Senate Bill 1025 a favorable report as amended, roll it into a new Committee Substitute and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

Senator Clodfelter was recognized to explain **Senate Bill 1026 – AN ACT TO PROVIDE THE SUPREME COURT WITH AUTHORITY TO REVISE THE RULES OF CIVIL PROCEDURE AND CRIMINAL PROCEDURE AND THE RULES OF EVIDENCE, SUBJECT TO AMENDMENT OR VETO BY THE GENERAL ASSEMBLY AND TO APPROPRIATE FUNDS FOR ADVISORY COMMITTEES ON THE ADOPTION AND AMENDMENT OF THOSE RULES.**

Mike Crowell, with the Future of the Courts Commission and Judge Thomas Ross, Director of the Administrative Office of the Courts, were recognized to answer questions from the Committee.

Senator Gulley moved to give Senate Bill 1026 a favorable report and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

Senator Gulley was recognized to explain **Senate Bill 969 – AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH AND WELLNESS TRUST FUND FOR THE PURPOSE OF RECEIPT AND DISTRIBUTION OF TWENTY-FIVE PERCENT OF THE TOBACCO SETTLEMENT FUNDS IN THE SETTLEMENT RESERVE FUND ESTABLISHED UNDER G.S. 143-16.4 TO DEVELOP A COMPREHENSIVE COMMUNITY-BASED PLAN AND FUND PROGRAMS AND INITIATIVES FOR IMPROVING THE HEALTHY AND WELLNESS OF THE PEOPLE OF NORTH CAROLINA WITH A PRIORITY ON PREVENTING, REDUCING, AND REMEDYING THE HEALTH EFFECTS OF TOBACCO USE WITH AN EMPHASIS ON REDUCING YOUTH TOBACCO USE.**

Senator Gulley moved to adopt a Proposed Committee Substitute (#012) to Senate Bill 969 for discussion. The motion carried by a majority voice vote.

Senator Gulley moved to amend the Proposed Committee Substitute on Page 3, Line 37 and Page 4, Line 23. The motion carried by a majority voice vote. (Amendment attached.)

Senator Rand moved to give the Proposed Committee Substitute to Senate Bill 969 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, June 22, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 969	N.C. Health & Wellness Trust Fund	Gulley
SB 1025	Reorganize Superior Court Divisions/ Pilot Fund	Clodfelter
SB 1026	Supreme Court Rules Making/Funds	Clodfelter

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 22, 1999

SB 969	N.C. Health & Wellness Trust Fund	Gulley
SB 1025	Reorganize Superior Court Divisions/ Pilot Fund	Clodfelter
SB 1026	Supreme Court Rules Making/Funds	Clodfelter

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1025

Short Title: Reorg. Sup. Ct. Divisions/Pilot Funds. (Public)

Sponsors: Senators Clodfelter, Odom; Cooper, Gulley, and Warren.

Referred to: Judiciary I.

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>sixty-two</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, Pasquotank,	2

		Perquimans	
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
Second	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, Mitchell, Watauga, Yancey	1

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 a trial court administrator 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, with the consent of 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, 2001, 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 two hundred thousand dollars ($200,000) 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 July 1, 1999.

SENATE BILL 1025:
Reorganize Superior Court Divsions/Pilot Funds

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senators Clodfelter and Odom
Date:	June 22, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

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, 2001, on the operation of the pilot program. There is an appropriation from the General Fund to the AOC in the amount of $200,000 for fiscal year 1999-2000 to establish the pilot program. The act becomes effective on July 1, 1999.***

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, 2001, 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 $200,000 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 July 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/22/99

S. B. No. 1025 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Clodfelter

moves to amend the bill on page 2, line ~~4~~ 5

( ) WHICH CHANGES THE TITLE

by deleting the word, "Second", and substituting the word, "First";

and on page 4, line 32, by rewriting the line to read:

(2) Assign staff to assist each coordinating judge;

and on page 4, line 36 by rewriting the line to read:

(4) Authorize the coordinating judge, in consultation with the Clerk of ~~Superior Court~~, the district attorney, and the senior

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1026

Short Title: Supreme Court Rule Making/Funds. (Public)

Sponsors: Senators Clodfelter and Odom.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE SUPREME COURT WITH AUTHORITY TO REVISE THE RULES OF CIVIL AND CRIMINAL PROCEDURE AND THE RULES OF EVIDENCE, SUBJECT TO AMENDMENT OR VETO BY THE GENERAL ASSEMBLY AND TO APPROPRIATE FUNDS FOR ADVISORY COMMITTEES ON THE ADOPTION AND AMENDMENT OF THOSE RULES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-34 reads as rewritten:

"**§ 7A-34. Rules of practice and procedure in trial courts.**

(a) ~~The Supreme Court is hereby authorized to prescribe rules of practice and procedure for the superior and district courts supplementary to, and not inconsistent with, acts of the General Assembly.~~ Pursuant to the authority granted it under Article IV, Section 13 of the Constitution of North Carolina, the General Assembly delegates authority to the Supreme Court to adopt and amend the rules of civil and criminal procedure and rules of evidence for the trial divisions.

Except as provided in subsection (b) of this section, each new rule or amended rule shall be published in the North Carolina Register and shall become effective on the thirty-first legislative day of the next regular session of the General Assembly that begins at least 25 days after the date of that publication, unless the Supreme Court specifies a later effective date. For purposes of this section, "legislative day" means a day on which either house of the General Assembly is in session.

(b) The General Assembly may amend or veto any proposed new rule or amended rule. If a bill to amend or veto a new rule or amended rule is introduced

in either house of the General Assembly before the thirty-first legislative day of the next regular session of the General Assembly that begins at least 25 days after the date of publication of the rule, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that amends or vetoes the new rule or amended rule. If the Supreme Court specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. For purposes of this section, the day that a session of the General Assembly "adjourns" means (i) in a regular session held in an odd-numbered year, adjournment by joint resolution for more than 10 days; and (ii) in a regular session held in an even-numbered year, adjournment sine die.

(c) The Chief Justice may appoint advisory committees of up to eight members each to advise the Supreme Court on the adoption and amendment of the rules of civil procedure, the rules of criminal procedure, and the rules of evidence. Members of each advisory committee 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 each advisory committee 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 each advisory committee who are legislators shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1.

(d) The Rules of Civil Procedure, as set forth in Chapter 1A and elsewhere in the General Statutes, the Rules of Evidence, as set forth in Chapter 8C and elsewhere in the General Statutes, and the rules of criminal procedure, as set forth in Chapter 15A and elsewhere in the General Statutes, are deemed adopted by the Supreme Court until modified by the Supreme Court pursuant to this section. Upon adoption of a new rule or amended rule, the Supreme Court shall notify the General Assembly of the need to repeal or amend the General Statutes to reflect the change."

Section 2. There is appropriated from the General Fund to the Judicial Department the sum of twelve thousand five hundred dollars ($12,500) for the 1999-2000 fiscal year and the sum of twenty-five thousand dollars ($25,000) for the 2000-2001 fiscal year for reimbursement for travel and subsistence expenses for the members of the advisory committees on the rules of civil procedure, criminal procedure, and evidence authorized by G.S. 7A-34(c).

Section 3. This act becomes effective January 1, 2000.

SENATE BILL 1026:
Supreme Court Rule Making/Funds

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Senators Clodfelter and Odom
Date:	June 22, 1999	**Summary by:**	Jo B. McCants
Version:	1		Committee Co-Counsel

SUMMARY: ***Senate Bill 1026 is a recommendation of the Commission for the Future of Justice and the Courts in North Carolina. The bill gives the Supreme Court (Court) the authority to adopt and amend rules of civil and criminal procedure and the rules of evidence. All new or amended rules must be published in the North Carolina Register (Register). The new or amended rules become effective on the thirty-first legislative day of the next regular session of the General Assembly that begins at least 25 days after the date of the publication in the Register, unless the Court specifies a later effective date. The General Assembly may amend or veto any proposed new rule or amended rule. The Chief Justice may appoint advisory committees to advise the Court on the adoption and amendment of the rules of civil or criminal procedure or the rules of evidence. The current rules of civil and criminal procedure and the rules of evidence are deemed adopted by the Court until modified by the Court. There is an appropriation from the General Fund to the Judicial Department in the amount of $12,500 for 1999-2000 and $25,000 for 2000-2001 to provide reimbursement for travel and subsistence expenses of the advisory committees. The act becomes effective on January 1, 2000.***

BILL ANALYSIS:

Section 1: The General Assembly delegates its authority to make rules of procedure and practice for the superior and district court divisions to the Supreme Court. The Supreme Court currently has the exclusive authority to make rules of procedure and practice for the appellate division. The Supreme Court also has the authority to prescribe rules of practice and procedure for the superior and district courts supplementary to and not inconsistent with the acts of the General Assembly.

Any new rule or amended rule proposed by the Supreme Court must be published in the North Carolina Register. A new or amended rule becomes effective on the thirty-first legislative day of the next regular session of the General Assembly that begins at least 25 days after the date of the publication, unless the Supreme Court specifies a later effective date.

The General Assembly may amend or veto any proposed new or amended rule. If a bill is introduced in either house of the General Assembly to amend or veto any proposed new or amended rule before the thirty-first legislative day , the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day the session adjourns without ratifying the bill.

The Chief Justice is given the authority to appoint advisory committees of up to 8 members each to advise the Supreme Court on the adoption and amendment of the rules of civil and criminal procedure and the rules of evidence. Members of the advisory committees 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 (see below). Members who are officers or employees of the State shall be reimbursed at a rate set in G.S. 138-6 (see below). Members of the advisory committees who are legislators shall be reimbursed at the rate set out in G.S. 120-3.1 (see below).

The current rules of civil and criminal procedure and the current rules of evidence are deemed adopted by the Supreme Court until modified. The Supreme Court is required to notify the General Assembly of the need to repeal or amend the General Statutes because of the adoption of a new or amended rule.

Section 2: An appropriation is made to the Judicial Department in the amount of $12,5000 for fiscal year 1999-2000 and the sum of $25,000 for fiscal year 2000-2001to provide reimbursement for the travel and subsistence expenses of the members of the advisory committees.

Section 3: The act becomes effective January 1, 1999.

Art. IV, Sec. 13. Forms of action; rules of procedure.

(1) Forms of Action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) Rules of Procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

§ 138-5. Per diem and allowances of State boards, etc.

(a) Except as provided in subsections (c) and (f) of this section, members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

(1) Compensation at the rate of fifteen dollars ($15.00) per diem for each day of service;

(2) Reimbursement of subsistence expenses at the rates allowed to State officers and employees by subdivision (3) of G.S. 138-6(a).

(3) Reimbursement of travel expenses at the rates allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a).

(4) For convention registration fees, the actual amount expended, as shown by receipt.

(b) Except as provided in subsections (c) and (f) of this section, the schedules of per diem, subsistence, and travel allowances established in this section shall apply to members of all State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer, excluding those boards, commissions, committees and councils the members of which are now serving without compensation and excluding occupational licensing boards as defined in G.S. 93B-1; and all special statutory provisions relating to per diem, subsistence, and travel allowances are hereby amended to conform to this section.

(c) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 29.

(d) The subsistence reimbursement for actual lodging expenses provided in this section must be documented by a receipt of lodging expenses from a commercial establishment.

(e) Out-of-state travel on official business by members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget.

(f) Members of all State boards, commissions and councils whose salaries or any portion of whose salaries are paid from State funds shall receive no per diem compensation from State funds for their services; provided, however, that members of State boards, commissions and councils who are also members of the General Assembly shall receive, when the General Assembly is not in session, subsistence and travel allowances at the rate set forth in G.S. 120-3.1(a)(2) through (a)(4).

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

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

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

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

(3) For expenses incurred for subsistence, payment of eighty-one dollars ($81.00) per day when traveling in-state or ninety-three dollars ($93.00) per day when traveling out-of-state. Payment of sales tax, lodging tax, local tax, or service fees applied to the cost of lodging are to be paid in addition to the daily subsistence amount. The employee may exceed the part of the ceiling allocated for lodging without approval for overexpenditure provided that the total lodging and food reimbursement does not exceed the maximum provided by this subdivision. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

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

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

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

(4) For convention registration fees not to exceed the actual amount expended as shown by a valid receipt or invoice.

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

(c) Reimbursement of actual costs of overnight lodging, whether in-state or out-of-state, must be documented by a receipt of actual lodging expenses from a commercial establishment. This documentation shall be attached to the reimbursement request. All reimbursement requests shall be filed for approval and payment within 30 days after the travel period for which the reimbursement is being requested.

§ 120-3.1. Subsistence and travel allowances for members of the General Assembly.

(a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

(1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993.

(2) A travel allowance at the rate which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993, whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.

(3) A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at 58 Federal Register 67959 (December 22, 1993), while the General Assembly is in session and, except as otherwise provided in this subdivision, while the General Assembly is not in session when, with the approval of the Speaker of the House of Representatives in the case of Representatives or the President Pro Tempore of the Senate in case of Senators, the member is:

a. Traveling as a representative of the General Assembly or of its committees or commissions, or

b. Otherwise in the service of the State.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of twenty-six dollars ($26.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the Legislative Services Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at 58 Federal Register 67950-67964 (December 22, 1993) and at 59 Federal Register 23702-23709 (May 6, 1994).

(4) A member may be reimbursed for registration fees as permitted by the Legislative Services Commission.

(b) Payment of travel and subsistence allowances shall be made to members of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed by the Legislative Services Commission. Claims for travel and subsistence payments shall be paid at such times as may be prescribed by the Legislative Services Commission.

(c) When the General Assembly by joint action of the two houses adjourns to a day certain, which day is more than three days after the date of adjournment, the period between the date of adjournment and the date of reconvening shall for the purposes of this section be deemed to be a period when the General Assembly is not in session, and no member shall be entitled to subsistence and travel allowance during that period, except under circumstances which would entitle him to subsistence and travel allowance when the General Assembly is not in session.

(d) Repealed by Session Laws 1989 (Regular Session 1990), c. 1066, s. 24(a), effective January 30, 1991.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, June 22, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1026** Supreme Court Rule Making/Funds
Sequential Referral: Appropriations
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S969-CSRU-012
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 969
THIS IS A DRAFT 21-JUN-99 15:20:00
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: N.C. Health and Wellness Trust Fund. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH AND WELLNESS TRUST FUND FOR THE PURPOSE OF RECEIPT AND DISTRIBUTION OF TWENTY-FIVE PERCENT OF THE TOBACCO SETTLEMENT FUNDS IN THE SETTLEMENT RESERVE FUND ESTABLISHED UNDER G.S. 143-16.4 TO DEVELOP A COMPREHENSIVE COMMUNITY-BASED PLAN AND FUND PROGRAMS AND INITIATIVES FOR IMPROVING THE HEALTH AND WELLNESS OF THE PEOPLE OF NORTH CAROLINA WITH A PRIORITY ON PREVENTING, REDUCING, AND REMEDYING THE HEALTH EFFECTS OF TOBACCO USE WITH AN EMPHASIS ON REDUCING YOUTH TOBACCO USE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding the following new section to read:

"§ 143-15.3D. **Health and Wellness Trust Fund.**

(a) The Health and Wellness Trust Fund is established in G.S. 147-86.30. The State Controller shall allocate and reserve to the Fund fifty percent (50%) of the monies received in the Settlement Reserve Fund pursuant to G.S. 143-16.4 and the consent decree entered in the action of State of North Carolina v. Phillip Morris et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(b) The funds in the Health and Wellness Trust Fund shall be used only in accordance with Article 6C of Chapter 147 of the General Statutes.

(c) It is the intent of the General Assembly that the funds provided pursuant to Article 6C of Chapter 147 to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health programs."

Section 2. Chapter 147 of the General Statutes is amended by adding a new Article 6C to read:

"ARTICLE 6C.

"Health and Wellness Trust Fund.

"**§ 147-86.30. Health and Wellness Trust Fund: established.**

(a) Fund Established. -- There is established the North Carolina Health and Wellness Trust Fund in the State Treasurer's Office that shall be used to develop a comprehensive community-based plan and to finance programs and initiatives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and on reducing youth tobacco use.

(b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Health and Wellness Trust Fund Board of Trustees.

(c) Creation of Fund Reserve. -- The Board of Trustees shall reserve, and shall not expend, twenty-five percent (25%) of each annual payment allocated to the Health and Wellness Trust Fund pursuant to G.S. 143-15.3D during years 1999 through 2025 to create and build the Fund Reserve. During years 1999 through 2025 the Board of Trustees may not expend any investment earnings on the reserved funds. Beginning in year 2026, and thereafter, the Board of Trustees shall not expend the reserved funds but may expend any investment earnings on the reserved funds.

(d) Use of Non-Reserved Funds. -- The Board of Trustees may expend the remaining seventy-five percent (75%) portion of each annual payment that is not reserved pursuant to subsection (c) of this section. Any unexpended portion of the non-reserved portion of each annual payment for years 1999 through 2025 that could have been expended under this subsection may be carried forward

to subsequent years and may be expended during any subsequent year in addition to the non-reserved portion of each annual payment allowed to be expended under this subsection. The Board of Trustees may expend any investment earnings on the non-reserved funds.

(e) Fund Purposes. -- Moneys from the Fund may be used for any of the following purposes:

(1) To fund programs and initiatives that include, but are not limited to, research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.

(2) To develop a comprehensive, community-based plan to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use.

In all endeavors the Board of Trustees shall place priority on the needs of vulnerable, underserved populations and shall provide advice and technical support in addressing those needs.

(f) Limit on Operating and Administrative Expenses. -- No more than two and one-half percent (2 1/2%) of the annual balance of the Fund on July 1 or a total sum of one million dollars, ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"§ 147-86.31. Health and Wellness Trust Fund: eligibility for grants.

Eligible Grant Applicants. -- Any of the following are eligible to apply for a grant from the Fund:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation which has as a significant purpose promoting public health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

"§ 147-86.32. Health and Wellness Trust Fund: Board of Trustees established; membership qualifications; vacancies.

(a) Board of Trustees Established. -- There is established the Health and Wellness Trust Fund Board of Trustees. As used in this Article the phrase 'Board of Trustees' means the Health and

Wellness Trust Fund Board of Trustees. The Health and Wellness Trust Fund Board of Trustees shall exercise its powers independently, but for administrative purposes, the Board of Trustees shall be located within the State Treasurer's Office.

(b) Membership. -- The Health and Wellness Trust Fund Board of Trustees shall consist of 17 members as follows:

(1) Five appointed by the Governor.

(2) Five appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121; and

(3) Five appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

The Dean of the UNC School of Public Health and State Health Director will be ex officio, nonvoting members of the Board of Trustees.

The appointing authorities shall choose as trustees persons who are officers, employees, or persons affiliated with, nonprofit organizations, medical institutions, organizations involved in the delivery of health care services or products, governmental or law enforcement agencies, or individuals who are involved in the delivery of medical services or sale of products which have a major purpose of promoting public health, reducing youth access to tobacco products, and reducing the health consequences of tobacco use.

(c) Initial Appointments. -- Each appointing authority shall designate two of the authority's initial appointments to serve one-year terms, two to serve two-year terms, and one to serve a three-year term. Thereafter, as the term of each trustee expires, that trustee's successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of four years, each trustee shall serve at the will of the appointing authority. The Governor shall appoint one trustee to serve as Chair of the Board of Trustees.

(d) Vacancies. -- Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term in accordance with G.S. 120-122.

(e) Frequency of Meetings. -- The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the voting members.

(f) Meeting Facilities. -- The State Treasurer's Office shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair of the Board of Trustees.

(g) Per Diem and Expenses. -- The Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the trustees shall be paid from the Fund.

(f) Conflict of Interest. -- The members of the Board of Trustees shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest. In addition to the restrictions imposed under G.S. 14-234, a trustee shall not vote on, participate in the deliberations of, or otherwise attempt through his or her official capacity to influence the vote on a grant or other financial assistance award by the Board of Trustees to a nonprofit entity of which the trustee is an officer, director, or employee or to a governmental entity of which the trustee is an employee or a member of the governing board. A violation of this subsection is a Class 1 misdemeanor.

"**§ 147-86.33. Health and Wellness Trust Fund: powers and duties.**

(a) Allocate Grant Funds. -- The Board of Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a program or initiative that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. -- The Board of Trustees shall develop criteria for awarding grants under this Article. The criteria shall include types of programs and initiatives to be funded.

(c) Develop Evaluation Mechanism. -- The Board of Trustees shall develop a mechanism with which to evaluate individual applications.

(d) Achievement of Federal Mandates. -- The Board of Trustees shall ensure that good faith efforts are made to achieve federal mandates targeting the reduction of youth access to tobacco products.

(e) Administration of the Trust Fund. -- The Board of Trustees is authorized to hire staff or contract for other expertise for the administration of the Trust Fund. All administrative expenses of the Board of Trustees shall be paid from funds in the Trust Fund.

(f) Gifts and Grants. -- The Board of Trustees is authorized to accept gifts or grants from other sources.

"**§ 147-86.34. Health and Wellness Trust Fund: reporting requirements.**

The Chair of the Board of Trustees shall report each year to the Joint Legislative Committee on Governmental Operations on its

activities. Written reports shall also be sent on a quarterly basis to the Joint Legislative Committee on Governmental Operations.

"**§ 147-86.35. Health and Wellness Trust Fund: open meeting and public records requirements.**

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Health and Wellness Trust Fund, and it shall be subject to audit by the State Auditor as provided by law."

Section 3. G.S. 150B-1(d) is amended by adding a new subdivision (8) to read:

"(8) The Health and Wellness Trust Fund Board of Trustees established pursuant to Article 6C of Chapter 147 of the General Statutes."

Section 4. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Health and Wellness Trust Fund Board of Trustees established pursuant to Article 6C of Chapter 147 of the General Statutes."

Section 5. G.S. 143-16.4 reads as rewritten:

"**§ 143-16.4. Settlement Reserve Fund.**

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. The State Controller shall allocate and reserve fifty percent (50%) of these funds to the Health and Wellness Trust Fund in accordance with G.S. 143-15.3D. All remaining funds ~~Funds~~ shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgement of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund."

Section 6. This act is effective when it becomes law.

SENATE BILL 969:
N.C. Health and Wellness Trust Fund.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	June 22, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Com Sub S969-CSRM-012		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 969 would establish the N.C. Health and Wellness Trust Fund to receive and distribute twenty-five percent of the tobacco settlement funds received by the State, to be used to develop a comprehensive community-based plan for improving the health and wellness of North Carolina citizens with a priority on preventing, reducing, and remedying the health effects of tobacco use and to reduce youth tobacco use, and to fund these programs.***

CURRENT LAW: Earlier this session, Senate Bill 6 was enacted as S.L. 1999-2 which approved the nonprofit corporation proposed in the tobacco settlement consent decree to administer one-half of the tobacco settlement funds to provide economic impact assistance to economically affected or tobacco-dependent communities. No other legislation has been enacted relative to the remaining funds to be received by the State from the tobacco settlement.

BILL ANALYSIS: Section 1 of the Proposed Committee Substitute for Senate Bill 969 would establish the Health and Wellness Trust Fund and would provided that 25% of the tobacco settlement funds (50% of the remaining tobacco settlement funds) received by the State would be place in this Fund.

Section 2 creates a new Article for the administration of the Fund.

G.S. 147-86.30 provides that the Fund will be invested by the State Treasurer and administered and disbursed by a Board of Trustees. Through 2025, 25% of the annual payments and the earnings on these payments are to be held in reserve. The Board is authorized to expend annually all of the remaining 75% of the annual payments to the Fund and the earnings on these non-reserved funds. After 2025, all earnings on the reserve may be spent annually. The Fund can be used to fund 1) programs and initiatives for research, education, prevention, and treatment of health problems and to increase the capacity of communities to respond to public health needs, and 2) to develop a comprehensive, community-based plan to improve the health and wellness of citizens with a priority on preventing, reducing, and remedying the health effects of tobacco use and an emphasis on reducing youth tobacco use. Priority for funding is given to underserved areas. Administrative costs are capped annually at the lesser of 2 1/2% of the annual July 1 Fund balance or $1,000,000.

G.S. 147-86.31 specifies that State agencies, local governments, and nonprofit corporations with a significant purpose of promoting public health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use are eligible for grants from the Fund.

G.S. 147-86.32 provides for the establishment of the 17-member Fund Board of Trustees, five members to be appointed by the Governor, five members appointed by the General Assembly on the recommendation of the Speaker, and five members appointed by the General Assembly on the

recommendation of the President Pro Tempore. The Dean of the UNC School of Public Health and the State Health Director serve as ex officio, non-voting members. Trustees are to be appointed from person affiliated with nonprofit organizations, medical institutions, health care services or product delivery organizations, government or law enforcement agencies, or individuals involved in the delivery of medical services or sale of products promoting public health, reducing youth access to tobacco products, and reducing the health consequences of tobacco use. The terms of the initial appointees vary to create staggered terms. Subsection (g) of this section prohibits trustees from acting when a conflict of interest exists. No quorum for the Board is specified in statute.

G.S. 147-86.33 authorizes the Board to disburse Fund assets by grants to qualified entities, based on grant criteria and evaluation processes established by the Board.

G.S. 147-86.34 requires quarterly written reports and an annual report by the Chair of the Board to GovOps.

G.S. 147-86.35 makes clear that the Fund is subject to the Open Meetings and Public Record laws and audit by the State Auditor.

Section 3 will exempt the Board from the rulemaking provisions of the Administrative Procedures Act. By virtue of this exemption the Board will not be required to publicly publish proposed rules prior to adoption, or receive public comments or hold public hearings on proposed rules prior to adoption. Rules adopted by the Board will not be subject to review by the Rules Review Commission nor presented to the General Assembly for legislative disapproval. Actions taken by the Board will be subject to the contested case and judicial review provisions of the Administrative Procedures Act.

Section 4 prohibits members of the General Assembly from serving on the Board.

Section 5 amends the statute governing the Settlement Reserve Fund into which the proceeds of tobacco settlement actions are to be paid, by directing that 50% of these funds are to be allocated to the Health and Wellness Trust Fund.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-22-99

S. B. No. 969 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) GUNNEY
Sen.)

moves to amend the bill on page 3, line 37

( ) WHICH CHANGES THE TITLE AND PAGE 4 AT LINE 23

by

deleting THE word "public"

and replacing the word with:

"the public's".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, June 23, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **969** N. C. Health and Wellness Trust Fund

Draft Number:	PCS 1763
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1025** Reorg. Sup. Ct. Divisions/Pilot Funds

Draft Number:	PCS 3838
Sequential Referral:	Appropriations
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

(1)

VISITOR REGISTRATION SHEET

Judiciary 1 — Name of Committee

6-22-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ben Thompson	Pfizer Labs 4002 Red Oak Ct. High Point NC 27265
Ben Clayton	Pfizer - 3102 Timberwolf Ave, High Point NC 27265
Will Sean	Pfizer - 7929 Strawberry Meadows St. Raleigh 27613
Cliff Faille	Pfizer 310 Oakland Dr. Burlington, NC 27215
Hillary Maclean	Pfizer - 2935 CHELSEA DR. CHARLOTTE, NC 28209
Gary Schott	Pfizer, Greensboro, NC 27403 1819 W. Friendly Ave
Terry Gibson	Pfizer 300 Deer Creek LANE GREENVILLE, NC 27834
Jeanne Bonds	AOC
Peg Dorer	Conference of D.A.s
Beth Butler	Pfizer Labs 420-4 Bubblecreek Ct, Fayetteville NC 28311
Christine Adair	Pfizer 213 N. VIRGINIA AVE FAYETTEVILLE, NC 28305
Todd Burts	Pfizer 1921A - New Garden Rd. Apt. 101 GBO, NC 27410
Glenn Thomas	Pfizer 1909 Kateybridge Ln. Raleigh 27614
Marion Suitt	Bayer - Wellcome
Amy Jo Brim	NC Medical Society
Cherie Leckie	Pfizer 4366 Woodglen Ln Char, NC 28226

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Heather Smith	Pfizer 1229/C 10th St. Blvd, NW Hickory, NC 28601
Kent Whitfield	Pfizer 3416 Quickbrook Dr Conover, N.C. 28613
Stanley W. Wilson, Jr.	Pfizer Inc 1801 Springfield Farm Ct Clemmons, NC 27012
Sherry Hall	Pfizer Inc 1423 Queens Rd W. Charlotte NC 28207
Julia White	Dr Ellis office
Catherine Carruthers	Pfizer 1416 Cottage Pl Charlotte NC 28207
Nancy Fisher	Pfizer 1538 Iredell Drive Raleigh, NC 27608
Duane Easton	Pfizer 3011 Camp Ranger Lane Jamestown, NC 27282
[illegible]	Pfizer 594 Tahoe Dr. Durham, NC 27713
Suzie Blackwell	Pfizer 102 Skystasail Dr. Wilmington, NC 28409
Bob White	Pfizer 1522 Stonegate Dr. Graham, NC 27253
DOUGLAS A. WHITE	PFIZER 4028 ARMITAGE DR CHARLOTTE NC 28269
Ronnie Moore	N.C. Democratic Party
Holly Lepp	Pfizer 9214 Deer Spring Dr Charlotte, NC 28210
[illegible]	Tri-County Council
Deborah Bryan	AIA of NC

(3)

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	ACS
[signature]	Pfizer
[signature]	Pfizer
[signature]	Pfizer
[signature]	Pfizer
Phil Weeguan	Pfizer
Lucius Pullen	ATTORNEY
Ben Murray	NCNA
Adam Searcy	NCHAC
Polly Williams	AARP NC Equity
[signature]	
Jim Drennan	Institute of Government
John Phelps	NCLM
Patricia Reeder	NCACC
[signature]	DHHS

(4)

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jon Williams	CCPS
Michael D. Powell	NCCA
Randy Tyson	NCCA

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 29, 1999

The Senate Judiciary I Committee met on June 29, at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Dalton to explain **Senate Bill 897 – AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION**.

Senator Wellons moved to adopt a Proposed Committee Substitute to Senate Bill 897 for discussion. The motion carried by a majority voice vote.

Senator Rand moved to give the Proposed Committee Substitute to Senate Bill 897 a favorable report and re-refer it to the Finance Committee. The motion carried by a majority voice vote.

Senator Hartsell was recognized to explain **House Bill 202 – 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**, for Representative Culpepper, the bill sponsor.

Senator Hartsell moved to adopt a Proposed Committee Substitute to House Bill 202 for discussion. The motion carried by a majority voice vote.

Senator Lucas moved to give the Proposed Committee Substitute to House Bill 202 a favorable report. The motion carried by a majority voice vote.

Senator Rand was recognized to explain **House Bill 1279 – AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD**, for Representative Warner, the bill sponsor.

Senator Rand moved to adopt a Proposed Committee Substitute to House Bill 1279 for discussion. The motion carried by a majority voice vote.

Senator Albertson moved to give the Proposed Committee Substitute to House Bill 1279 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

SENATE JUDICIARY I COMMITTEE

AGENDA - June 29, 1999

SB 897	Safety Professionals	Dalton
HB 202	Amend Professional Corp. Act	Culpepper
HB 1216	Juvenile Justice Tech. Corrections	Baddour
HB 1279	Financial Identity Fraud	Warner

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 897*

Short Title: Safety Professionals. (Public)

Sponsors: Senators Dalton; and Perdue.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 37.

"Safety Profession.

"**§ 90-646. Definitions.**

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional (SP). -- A person who, through studies and training in management principles, engineering, chemistry, physics, biology, erogonomics, psychology, physiology, and related science, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"**§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.**

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5).

(b) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(c) Any person who violates this Article is guilty of a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of this Article. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(e) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article.

"**§ 90-648. Exemptions.**

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an associate safety professional, certified safety professional, or safety professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP', 'CSP', or 'SP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S897-CSRU-007
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 897
THIS IS A DRAFT 23-JUN-99 16:40:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Safety Professionals. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 37.

"Safety Profession.

"§ 90-646. Definitions.

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation, incorporated in Illinois in 1969, established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

"**§ 90-647. Unlawful acts; injunctive relief; exclusion.**

(a) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(b) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1 and a court may impose a civil penalty against the defendant and shall be empowered to issue a restraining order to prevent further use of the title.

"**§ 90-648. Exemptions and limitations.**

(a) This Article does not apply to:

(1) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an Associate Safety Professional or Certified Safety Professional.

(2) A person who practices within the scope of safety, injury, or illness prevention and does not use the title 'Associate Safety Professional' or 'Certified Safety Professional', the initials, 'ASP' or 'CSP', or otherwise represents himself or herself to the public as an Associate Safety Professional or Certified Safety Professional.

(3) A person who is licensed as an architect under Chapter 83A of the General Statutes or any person working under the supervision of a licensed architect.

(b) Nothing in this Article shall permit the practice of engineering by persons who are not licensed under Chapter 89C of the General Statutes.

"**§ 90-649. Certification registry.**

The Board shall file with the Secretary of State the name, address, telephone number, and date of certification for all Associate Safety Professionals and Certified Safety Professionals. The Board shall remit a filing fee of thirty-five dollars ($35.00) to the Secretary of State with each certification filed. All fees paid to the Department shall be used to pay the costs incurred in administering and enforcing

this Article. The Board may require this filing fee to be paid by the person whose certification is being filed. The Board shall promptly notify the Secretary of State when a person's certification is revoked or no longer in effect.

The Secretary of State shall maintain a registry of all current Certified Associate Safety Professionals and Certified Safety Professionals as furnished by the Board."

Section 2. This act becomes effective January 1, 2000, and applies to acts committed on or after that date.

SENATE BILL 897:
Safety Professionals.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Dalton
Date:	June 24, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S897-CSRU-007		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 897 would create a new Article 37 "Safety Profession" in Chapter 90 of the General Statutes, which governs medicine and allied occupations, to provide that only those persons certified by the private Board of Certified Safety Professionals as either a Certified Safety Professional or an Associate Safety Professional may represent themselves as certified safety professionals.***

CURRENT LAW: Current law does not provide for certification of safety professionals as defined in the bill nor does the law restrict the use of the name safety professional.

BILL ANALYSIS: Section 1 of the bill creates four new statutory sections. **G.S. 90-646** defines "Associate Safety Professional", "Board of Certified Safety Professionals", and Certified Safety Professional". An Associate or Certified safety professional is defined as a person who has met the education, experience and examination requirements established by the Board for that classification.

G.S. 90-467 would make it an unfair and deceptive trade practice for a person to represent themselves as a Certified Safety Professional or an Associate Safety Professional unless the person is certified by the Board of Certified Safety Professionals as such. This section would also authorize injunctive relief for violations of this law.

G.S. 90-468 exempts from the application of this new Article persons who are licensed as other professionals and are engaged in the practice of that profession, persons who practice within the scope of safety, injury, or illness prevention and who do not use specific titles, a person licensed as an architect and any person working under the supervision of a licensed architect. This section also makes it clear that this Article does not permit the practice of engineering except by licensed engineers.

G.S. 90-649 requires the Board to file with the Secretary of State the name, address, telephone number and the date of certification of all associate safety professionals and certified safety professionals and to pay a $35 filing fee which shall be used by the Secretary to pay the cost incurred in administering and enforcing the this law. The Secretary of State is required to keep a registry of safety professionals.

EFFECTIVE DATE: The bill becomes effective January 1, 2000 and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, June 29, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **897** Safety Professionals

Draft Number:	PCS 7700
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 202
Committee Substitute Favorable 3/22/99

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

H202-CSRU-002
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 202
THIS IS A DRAFT 12-MAY-99 15:33:09
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, TO ALLOW NONLICENSEES TO OWN UP TO FORTY-NINE PERCENT OF THE SHARES OF A PROFESSIONAL CORPORATION RENDERING CERTIFIED PUBLIC ACCOUNTANT SERVICES, AND TO EXEMPT CERTIFIED PUBLIC ACCOUNTANTS WHO ARE MEMBERS OF THE GENERAL ASSEMBLY FROM CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS.

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),~~ subsections (a1) and (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.

(a1) Any person may own up to forty-nine percent of the stock of a professional corporation rendering services under Chapter 93 of the General Statutes as long as:

(1) Licensees continue to own and control voting stock that represents at least fifty-one percent of the votes entitled to be cast in the election of directors of the professional corporation; and

(2) All licensees who perform professional services on behalf of the corporation comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

~~(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.~~ aggregate; or

d. With respect to a professional corporation rendering services under Chapter 93 of the General Statutes, are persons who own not more than forty-nine percent of the stock in the professional corporation as long as:

1. Individuals who meet the requirements of sub-subdivision a. or b. of this subdivision own and control voting stock that represents at least fifty-one percent of the votes entitled to be cast in the election of directors of the professional corporation; and

2. All licensees who perform professional services on behalf of the corporation in this State comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(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 successor section), is deemed for purposes of this section to be an individual licensee if at least one trustee of the plan is a licensee and all other trustees are licensees or are individuals who are licensed under the laws of a state in which the corporation maintains an office to perform at least one of the professional services, as defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes, rendered by the corporation.

(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. G.S. 93-12(8b) reads as rewritten:

"(8b) To formulate rules ~~and regulations~~ for the continuing professional education of all persons holding the certificate of certified public accountant, subject to the following provisions:

a. After January 1, 1983, any person desiring to obtain or renew a certificate as a certified public accountant must offer evidence satisfactory to the Board that ~~such~~ the person has complied with the continuing professional education requirement approved by the Board. The Board may grant a conditional license for not more than 12 months for persons who are being licensed for the first time, or moving into North Carolina, or for other good cause, in order that ~~such~~ the person may comply with the continuing professional education requirement.

b. The Board shall ~~promulgate rules and regulations~~ adopt rules for the administration of the continuing professional education requirement with a minimum number of hours of 20 and a maximum number of hours of 40 per year, and the Board may exempt persons who are retired or inactive from ~~said~~ the continuing professional education requirement. The Board may also permit any certified public accountant to accumulate hours of continuing professional education in any calendar year of as much as two additional years annual requirement in advance of or subsequent to the required calendar year.

c. Any applicant who offers satisfactory evidence on forms promulgated by the Board that ~~he~~ the applicant has participated in a continuing professional education program of the type required by the Board shall be deemed to have complied with this ~~section.~~ subdivision.

d. All members of the General Assembly are exempt from the continuing professional education requirement adopted by the Board."

Section 4. This act is effective when it becomes law.

HOUSE BILL 202:
Amend Professional Corporation Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Culpepper
Date:	May 18, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Senate PCS H202-CSRU-002		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 202 would amend the Professional Corporation Act to permit stock owned by a qualified retirement plan to qualify as stock held by a licensee for certain professional corporations and to permit 49% of a professional CPA corporation to be owned by a non-CPA. The bill also will exempt members of the General Assembly who are certified public accountants from the CPA annual continuing education requirements.***

CURRENT LAW: The general law for professional corporations is that the stock of the corporation must all be owned by a professional licensed in the field the corporation is authorized to practice in. Five professions have an exception to this rule, and for these professions (architects, landscape architects, engineers, surveyors, and geologist) only two-thirds of the stock is required to be held by licensees. The stock of a professional corporation of certified public accountants can only be held by CPA's as individuals. All CPA's are required to have 40 hours of continuing education a year.

BILL ANALYSIS: Section 1 of the bill would amend G.S. 55B-6 of the Professional Corporation Act to permit stock in a professional corporation of architects (Chapter 83A), landscape architects (Chapter 89A), engineers and land surveyors (Chapter 89C) and geologists (Chapter 89E) to be held by a qualified employee retirement plan provided the plan's trustees are all licensees. This section also adds a new subsection to permit up to 49% of the stock in a professional certified public accountant corporation to be held by non-CPA's, including other corporations, partnerships, or other business entities, provided that all professional services performed on behalf of the corporation must be performed by licensed CPA's.

Section 2 amends the Foreign Professional Corporation Act to make conforming changes to that act to reflect the changes made in Section 1 of the bill, except that only one trustee of a qualified employee retirement plan is required to be licensed in North Carolina. This section would also permit a foreign professional corporation to operate in North Carolina even thought the corporation is authorized in its home state to offer a broader range of services than is permitted under NC law, provided that the services offered in this State are limited to those services permitted to be offered by NC professional corporations.

Section 3 will exempt CPA' s serving in the General Assembly from the continuing education requirements applicable to all other CPA's. Attorney's who are members of the General Assembly have a similar exemption from their continuing legal education requirements.

EFFECTIVE DATE: The bill is effective when it becomes law.

H202-SMRU-001

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: May 12, 1999

RE: House Bill 202 (Amend Professional Corporation Act)

As recommended by the General Statutes Commission, this bill primarily amends G.S. 55B-6 and G.S. 55B-16 with respect to stock ownership by qualified employee retirement plans in certain listed fields.

G.S. 55B-6 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 bill as recommended by the Commission adds a new provision to G.S. 55B-6(a) to allow 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. Stated differently, 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. G.S. 55B-16, which applies to professional corporations incorporated in other states that wish to qualify to do business in this State, contains similar restrictions, with similar exceptions, and the bill accordingly includes a similar amendment to that statute (the new subsection (b1)).

The bill also contains stylistic amendments to G.S. 55B-6(a) and (b) and G.S. 55B-16(c) and an amendment to G.S. 55B-16(b)(2) that are recommended by the Commission. The stylistic amendments update the language and are not intended to be substantive. The amendment to G.S. 55B-16(b)(2) allows 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; the foreign professional corporation's activities in this State, however, are limited to those that domestic professional corporations may perform in this State.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1279
Committee Substitute Favorable 4/27/99

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.

The General Assembly of North Carolina enacts:

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

"ARTICLE 19C.

"Financial Identity Fraud.

"**§ 14-113.20. Financial identity fraud.**

(a) A person is guilty of financial identity fraud when the person intends to appropriate unlawfully the financial resources of another person and, without the authorization or consent of that other person, does one of the following:

(1) Obtains or records identifying information that would assist in accessing the financial resources of the other person.

(2) Accesses or attempts to access the financial resources of the other person through the use of identifying information.

(b) The term 'identifying information' as used in this section includes the following:

(1) Social security numbers.

(2) Drivers license numbers.

(3) Checking account numbers.

(4) Savings account numbers.

(5) Credit card numbers.

(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.

"**§ 14-113.21. Exceptions.**

The prohibitions set forth in G.S. 14-113.20 do not apply to any of the following:

(1) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction.
(2) The lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution.
(3) The lawful, good faith compliance by any party when required by any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive.

"**§ 14-113.22. Venue of offenses.**

In any criminal proceeding brought under this Article, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"**§ 14-113.23. Punishment and restitution.**

(a) A violation of this Article is punishable as a Class H felony.

(b) Any person whose identifying information is fraudulently used in violation of subsection (a) of this section may institute a civil action to enjoin and restrain any violation of this section and is entitled to civil damages of up to five thousand dollars ($5,000) for each violation of subsection (a) of this section, or three times the amount of actual damages, if any, sustained by the plaintiff, whichever amount is greater. The judge may award attorneys' fees to the prevailing party.

(c) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity fraud may be ordered by the court to make restitution to any victims of this fraud.

(d) In any case in which a person obtains identifying information of another person in violation of subsection (a) of this section, uses that information to commit a crime in addition to a violation of subsection (a) of this section, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1279-CSRU-003
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1279
THIS IS A DRAFT 29-JUN-99 09:32:09
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD AND TO ALLOW FOR THE RECOVERY OF DAMAGES FOR FINANCIAL IDENTITY FRAUD.

The General Assembly of North Carolina enacts:

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

"ARTICLE 19C.

"Financial Identity Fraud.

"**§ 14-113.20. Financial identity fraud.**

(a) A person who knowingly obtains, possesses, or uses personal identifying information of another person without the consent of that other person, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term 'identifying information' as used in this section includes the following:

(1) Social security numbers.

(2) Drivers license numbers.

(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.

(c) It shall not be a violation under this section for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

"**§ 14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"**§ 14-113.22. Punishment and liability.**

(a) A violation of G.S. 14-113.22 is punishable as a Class H felony, except if the victim suffers arrest, detention, or conviction as a proximate result of the offense, then the violation is punishable as a Class G felon.

(b) Notwithstanding subsection (a) of this section, any person who knowingly obtains, possesses, or uses personal identifying information of another person without the consent of that other person, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences, shall be liable to the other person for civil damages of up to five thousand dollars ($5,000) for each incident, or three times the amount of actual damages, if any, sustained by the person damaged, whichever amount is greater. A person damaged as set forth in this subsection may also institute a civil action to enjoin and restrain future acts which would constitute a violation of this subsection. The

court, in an action brought under this subsection, may award reasonable attorneys' fees to the prevailing party.

(c) In any case in which a person obtains identifying information of another person in violation of G.S. 14-113.20, uses that information to commit a crime in addition to a violation of G.S. 14-113.20, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

"**§ 14-113.23. Authority of the Attorney General.**

The Attorney General may investigate any complaint regarding financial identity fraud under this Article. In conducting these investigations, the Attorney General has all the investigative powers available to the Attorney General under Article 1 of Chapter 75 of the General Statutes. The Attorney General shall refer all cases of financial identity fraud under G.S. 14-113.20 to the district attorney in the county where the crime was deemed committed in accordance with G.S. 14-113.21."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1279:
Financial Identity Fraud.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Warner
Date:	June 29, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Com Sub *H1279-CSRU-003*		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1279 would create a new felony of financial identity fraud, to be punished as either a Class H or G felony. Under this bill it would be unlawful for a person to knowingly obtain, possess, or use personal identifying information of another person without consent, with the intent to fraudulently represent that the person is the other person for the purpose of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences. The bill also creates civil liability for a violation of this statute.***

CURRENT LAW: Current law makes it either a Class C felony (when valued $100,000 or more) or a Class H felony (when valued less than $100,000) for a person to obtain or attempt to obtain property by false pretenses. It is also a Class 2 misdemeanor to do a fraudulent credit card transaction. There is currently no law that makes it a crime to merely obtain personal identifying information of another person for fraudulent purposes.

BILL ANALYSIS: **G.S. 14-113.20** would create a new crime. Identity fraud would be different from current law in that it would allow for prosecution when someone takes or copies another person's identifying information with the intent to defraud that person, even if he or she does not get to the next step of appropriating or attempting to appropriate the other's financial resources.

Identifying information would be defined as names, addresses, phone numbers, social security numbers, drivers license numbers, financial institutions' account numbers, credit and debit card numbers, PIN numbers, electronic signatures, and other numbers or information that can be used to access a person's financial resources. Using this information for purposes otherwise permitted under law would not be a crime under this statute.

G.S. 14-113.21 would make the venue for the crime to be any county where part of the offense occurred, even if the defendant was never actually present in that county.

G.S. 14-113.22 provides that a violation will be punished as a Class H felony unless the victim suffers arrest, detention, or conviction as a proximate result of the offense, in which case the offense shall be punished as a Class I felony.

This section also permits a civil action to be brought to enjoin and restrain future acts, and civil damages of $5,000 per violation or three times the actual damages, whichever is greater.

If a person takes another persons financial identity under G.S. 14-113.20 and uses that information to commit another crime, the court records must reflect that the one whose identity was falsely used to commit the crime did not commit the crime.

G.S. 14-113.23 authorizes the Attorney General to investigate violations of this statue and refer criminal prosecutions to the district attorney in the county where the crime is committed.

BACKGROUND: According to a recent NCSL brief (see attached), financial identity fraud or identity theft is one of the country's fastest growing crimes. At least 10 states have enacted this type of legislation since 1996. Some are misdemeanors; some are felonies. Also, in 1998, Congress enacted a similar federal law called the Identity Theft Protection Act.

EFFECTIVE DATE: This bill would become effective December 1, 1999, and would apply to offenses committed and violations occurring on or after that date.

This summary was contributed to by Robin Johnson

H1279-SMRU-001

NCSL · LEGISBRIEF

February 1999 Vol. 7, No. 8

IDENTITY THEFT

By Rita Thaemert

It's one of the fastest growing crimes in the nation. And it's so simple: A thief obtains your Social Security number (SSN) or arms himself with a blank, preapproved credit application. Or he can pose as a loan officer and request credit reports with account numbers. Once he gets the information, the identity thief can open new accounts or establish lines of credit in your name. But forget the credit application and account numbers, your SSN unlocks a goldmine—educational, medical, financial and credit records. Unfortunately, victims (thousands a year) don't even know they've been robbed until they get outrageous charges on their credit card statements or a bad credit report. Some states and the federal government have taken steps to slow down the thieves.

State Actions

At least 10 states have enacted some form of identity theft legislation.

At least 10 states have enacted some form of identity theft legislation—Arizona, California, Georgia, Kansas, Mississippi, Missouri, Montana, New Jersey, West Virginia and Wisconsin. The first law passed in Arizona in 1996 reads, "A person commits 'taking the identity of another person' if the person knowingly takes the name, birth date or Social Security number of another person, without the consent of that other person, with the intent to obtain or use the other person's identity for any unlawful purpose or to cause loss to a person. Taking the identity of another person is a class 5 felony."

Recently California added a possible felony to its already existing misdemeanor charge for identity theft. The new law also says that court records must reflect the innocence of a person whose identity was falsely used.

Georgia passed the Personal Financial Security Act that defines the criminal offense of financial identity fraud, provides penalties, authorizes the attorney general to prosecute cases and repeals conflicting related laws. In addition to imprisonment, a person found guilty of financial identity fraud in Georgia may be ordered by the court to make restitution to victims.

Kansas law specifies that misuse of another's identification documents or personal identification numbers for economic benefit is a class A misdemeanor. It's a class B misdemeanor in Missouri to practice identity deception or fraud on an application for certification or licensure as a state certified real estate appraiser. Montana also applies a misdemeanor charge if bribery, theft or misrepresentation of identity are used to obtain health care information.

Identity Theft Laws

	Misdemeanor	Felony	Restitution	Nonfinancial Fraud	Credit Industry
Arizona	X	X			
California	X	X			
Colorado					X
Georgia	X		X		
Kansas	X			X	
Mississippi	X				
Missouri	X			X	
Montana	X				
New Jersey	X				X
West Virginia	X	X			
Wisconsin	X		X		
Federal		X	X		

Source: NCSL

NATIONAL CONFERENCE OF STATE LEGISLATURES

Executive Director, William T. Pound

Denver Office: 1560 Broadway Suite 700 Denver, Colorado 80202 303.830.2200

Washington Office: 444 N. Capitol St., N.W., Suite 515 Washington D.C. 20001 202.624.5400

A person in New Jersey who comes into control of lost property or property that was mislaid or delivered by mistake is guilty of theft if, knowing the owner's identity and with intent to deprive the owner of property, he converts the property to his own use. West Virginia also made a felony offense of taking another's name for the purpose of conducting financial or credit transactions in that name. In Wisconsin it's called a misappropriation of personal identifying information and includes recovery of damages, court costs and attorneys' fees.

Other states have addressed the problem of identity theft through legislation to provide consumers more control over their credit information and allow theft victims to catch fraudulent accounts early and monitor credit reports for inaccurate data. Colorado passed a law in 1997 that requires credit bureaus, upon request, to provide state consumers one free copy of their credit report every year. The bill also requires, for the first time in any state, that credit bureaus send consumers a notice of their right to obtain a free annual credit report whenever there are three or more inquiries about an individual consumer or whenever there is a report that would place negative information in a consumer's file.

Other states have addressed the problem through legislation that gives consumers more control.

Colorado's law increased fines for credit reporting agencies that fail to correct false information within 30 days of notification. New Jersey consumers also can obtain an annual free copy of their credit report upon request. Other states that provide consumers with free access to their credit reports are Georgia (two per year), Maryland, Massachusetts and Vermont.

Federal Action

Congress recently passed the Identity Theft Protection Act of 1998. It amends the federal criminal code, making it unlawful for anyone to knowingly transfer or use, without lawful authority, another person's identification with the intent to commit unlawful activity that constitutes a violation of federal law or a felony under state or local law. The new law sets criminal penalties for first and subsequent offenses. It also provides for mandatory restitution for victims that may include payment of any costs, including attorneys' fees.

The federal Identity Theft Protection Act of 1998 was recently signed into law.

The U.S. Postal Service recently began a change of address policy that now requires post offices to send a "Move Validation Letter" to both an old and a new address, so that a thief cannot divert customer mail without their knowledge. The letter asks customers to call an 800 number if a change of address was not filed. An individual can be arrested if suspected of stealing mail or filing a fake change of address and prosecuted if he or she applies for a credit card using another's name.

Legislation alone is not the complete solution to the identity theft dilemma. Consumers must take steps to secure their own financial records. They should never provide personal information over the phone, except to someone known or an established organization; shred preapproved credit applications, credit card receipts and other financial documentation; and ask businesses to limit access to their personal data. The credit industry should provide individual consumers with copies of their credit reports; take steps to more strictly verify a credit applicant's identification; and track more closely identity fraud cases, data and statistics.

Selected References

http://www.privacyrights.org/identity.html
Smith, Robert Ellis. "Compilation of State and Federal Privacy Laws 1997," *Privacy Journal*, Providence, R.I.

Contact for More Information

Rita Thaemert
NCSL—Denver
(303) 830-2200 ext. 157
rita.thaemert@ncsl.org

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, June 30, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

H.B.(CS #1)**202** Amend Professional Corp. Act/AB

Draft Number:	PCS 7266
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B.(CS #1)**1279** Financial Identity Fraud

Draft Number:	PCS A158
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary / 6-29-99
Name of Committee / Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
P. Bg Hall	General Statutes Commission
Jim Ahler	NCACPA
Tommy Herndon	"
Doug Lassiter	McClees Consulting
Bernard Allen	SOS
Paula A. Wolf	Covenant w/NC's Children
Paul Stock	NC Bankers Assn.
Debra Ross	ACLU
Larry Dix	OJJ
Fran Preston	NCRMA
Andy Ellen	NCAMA
Keith Pligs	Anderson & Assocs 7349 Friendly Ave Gso 27410
Roslyn Savitt	NCDCC
Jack Cozort	CEC NC
Bradley H	American Express

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tim Kent	American Institute of Architects
Marion Scott	NCSA
Bryan Beatty	DOJ

MINUTES
SENATE JUDICIARY I COMMITTEE
JULY 6, 1999

The Senate Judiciary I Committee met on July 6, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Alexander to explain **House Bill 1072 - AN ACT TO MAKE FOLLOWING TECHNICAL CORRECTIONS IN THE ELECTION LAWS: TO CLARIFY THE ROLE OF THE STATE BOARD OF ELECTIONS IN THE PROCESS OF ORDERING NEW ELECTIONS; TO CLARIFY THE APPEAL PROCESS IN CONTESTED ELECTIONS; TO REENACT AND RECODIFY PROVISIONS OF THE PRE-1995 VOTER REGISTRATION LAWS THAT WERE INADVERTENTLY DROPPED IN THE ENACTMENT OF ARTICLE 7A IN CHAPTER 163; TO CLARIFY THE STATUTES CONCERNING CANDIDATE VACANCIES IN THE NONPARTISAN ELECTION OF JUDGES; TO CONFORM THE PETITION STATUTES TO COURT RULINGS AND MAKE OTHER TECHNICAL CHANGES; AND TO CORRECT MISCELLANEOUS MISCITATIONS AND ERRORS IN THE ELECTION STATUTES.**

Senator Hoyle moved to adopt a Proposed Committee Substitute to House Bill 1072 for discussion. The motion carried by a majority voice vote.

Bill Gilkeson, Bill Drafting Staff Member, was recognized to explain the changes made in the Proposed Committee Substitute.

Senator Lucas moved to give the Proposed Committee Substitute to House Bill 1072 a favorable report. The motion carried by a majority voice vote.

Senator Dalton was recognized to explain **Senate Bill 873 - AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.**

Senator Lucas moved to adopt a Proposed Committee Substitute to Senate Bill 873 for discussion. The motion carried by a majority voice vote.

Senator Lucas moved to give the Proposed Committee Substitute to Senate Bill 873 a favorable report and re-refer it to the Rules Committee. The motion carried by a majority voice vote.

Representative Baddour was recognized to explain **House Bill 1216 - AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE JUVENILE JUSTICE REFORM ACT OF 1998.**

Senator Lucas moved to adopt a Proposed Committee Substitute to House Bill 1216 for discussion. The motion carried by a majority voice vote.

Senator Lucas moved to give the Proposed Committee Substitute to House Bill 1216 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, July 6, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

HB 1072	Election Law Cleanup	Alexander
HB 1216	Juvenile Justice Tech. Corr.	Baddour
SB 873	Improve Registered Documents	Dalton

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - July 6, 1999

HB 1072	Election Law Cleanup	Alexander
HB 1216	Juvenile Justice Tech. Corr.	Baddour
SB 873	Improve Registered Documents	Dalton

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1072
Committee Substitute Favorable 4/21/99

Short Title: Election Law Cleanup. (Public)

Sponsor:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE THE FOLLOWING TECHNICAL CORRECTIONS IN THE ELECTION LAWS: TO CLARIFY THE ROLE OF THE STATE BOARD OF ELECTIONS IN THE PROCESS OF ORDERING NEW ELECTIONS; TO CLARIFY THE APPEAL PROCESS IN CONTESTED ELECTIONS; TO REENACT AND RECODIFY PROVISIONS OF THE PRE-1995 VOTER REGISTRATION LAWS THAT WERE INADVERTENTLY DROPPED IN THE ENACTMENT OF ARTICLE 7A IN CHAPTER 163; TO CLARIFY THE STATUTES CONCERNING CANDIDATE VACANCIES IN THE NONPARTISAN ELECTION OF JUDGES; TO CONFORM THE PETITION STATUTES TO COURT RULINGS AND MAKE OTHER TECHNICAL CHANGES; AND TO CORRECT MISCELLANEOUS MISCITATIONS AND ERRORS IN THE ELECTION STATUTES.

The General Assembly of North Carolina enacts:

-- CLARIFYING THE ROLE OF THE STATE BOARD OF ELECTIONS IN THE PROCESS OF ORDERING NEW ELECTIONS.

Section 1. G.S. 163-22.1(a) reads as rewritten:

"(a) State Board's Authority. -- If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities

over whose elections it has jurisdiction. The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county or municipal board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of ~~evidence and provided further that the State Board adopts the findings of the county or municipal board of elections.~~ evidence.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section."

-- CLARIFYING THE APPEAL PROCESS IN CONTESTED ELECTIONS.

Section 2. G.S. 163-181 reads as rewritten:

"§ 163-181. ~~Certification of election stayed~~ Appeal process when election is contested.

~~The chairman of the county or city board of elections shall not issue a certification of election or nomination or the results of a referendum if there is an election contest pending before the county or city board of election or before the State Board of Elections on appeal or otherwise.~~

~~Appeals from a decision of the State Board of Elections shall be to the Superior Court of Wake County.~~

~~A copy of the State Board of Elections' final decision shall be served on the parties personally or by certified mail. After the decision by the State Board of Elections has been served on the parties, the certification of election shall issue unless the appealing party petitions the Superior Court of Wake County for a stay of the certification within 10 days after the date of service.~~

~~The Superior Court of Wake County shall not issue a stay of certification unless the petitioner shows the court that he intends to appeal the decision of the State Board of Elections and that he is likely to prevail and that the results of the election would be changed in his favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.~~

A copy of the final decision of the State Board of Elections in a contested election shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision. An aggrieved party has the right to appeal the final decision within 10 days of the date of service. After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service.

Appeals from a decision of the State Board of Elections shall be to the Superior Court of Wake County. The court shall not issue a stay of certification of nomination or election or the results of a referendum unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, that the petitioner is likely to prevail, and that the

results of the election would be changed in the petitioner's favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.

The chair of the county or municipal board of elections shall not issue a certification of nomination or election or the results of a referendum until 10 days after service of a final decision in an election contest or until an election contest is dismissed. No certification shall issue while an election contest is pending before the county, municipal, or State board of elections on appeal or otherwise."

-- REENACTING AND RECODIFYING PROVISIONS OF PRE-1995 VOTER REGISTRATION ARTICLE THAT WERE INADVERTENTLY DROPPED IN ENACTMENT OF ARTICLE 7A OF CHAPTER 163.

Section 3.(a) Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-37. Duty of county board of commissioners.**

The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections."

Section 3.(b) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-131. Accessible polling places.**

(a) The State Board of Elections shall promulgate rules to assure that any disabled or elderly voter assigned to an inaccessible polling place, upon advance request of such voter, will be assigned to an accessible polling place. Such rules should allow the request to be made in advance of the day of the election.

(b) Words in this section have the meanings prescribed by P.L. 98-435, except that the term 'disabled' in this section has the same meaning as 'handicapped' in P.L. 98-435."

-- CLARIFYING THE STATUTES CONCERNING CANDIDATE VACANCIES IN THE NONPARTISAN ELECTION OF JUDGES.

Section 4.(a) G.S. 163-327 reads as rewritten:

"**§ 163-327. ~~Death~~ Vacancies of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. -- If a candidate for nomination in a primary ~~dies,~~ dies or becomes ~~disqualified, or withdraws~~ disqualified 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 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."

Section 4.(b) G.S. 163-328 reads as rewritten:

"**§ 163-328. Failure of candidates to file; death or other disqualification 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 or Other Disqualification 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 or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the ~~death,~~ death or other disqualification, 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,~~ death or other disqualification, 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~~ Vacancy Caused by 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, other disqualification, or resignation, 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~~ vacated candidate shall remain on the ballots. If a ~~deceased~~ vacated 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."

-- CONFORMING THE STATUTES TO COURT RULINGS CONCERNING PETITIONS AND MAKING OTHER TECHNICAL CHANGES TO THE PETITION STATUTES.

Section 5.(a) G.S. 163-96(b) reads as rewritten:

"**§ 163-96. "Political party" defined; creation of new party.**

(a) Definition. -- A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. -- Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ..... COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ..... AND WHOSE STATE CHAIRMAN IS ....., RESIDING AT..... AND WHO CAN BE REACHED BY TELEPHONE AT..... THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

~~The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:~~

~~(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or~~

~~(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being~~

~~sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.~~

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections ~~shall require a fee of five cents (5¢) for each signature appearing and~~ shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are ~~presented and the required fee received.~~ presented.

(c) Repealed by Session Laws 1983, c. 576, s. 3."

Section 5.(b) G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. ~~Each~~ No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. ~~The~~ Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a

check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are ~~presented and a fee of five cents (5¢) for each name appearing on the petition has been received.~~ presented.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions ~~and affidavit~~ have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Section 5.(c) G.S. 163-123(c)(1) reads as rewritten:

"(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. ~~Before being filed with the State Board of Elections,~~ No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. ~~The~~ Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented. ~~At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.~~"

-- CORRECTING MISCITATIONS AND OTHER TECHNICAL ERRORS IN THE ELECTIONS STATUTES.

Section 6.(a) G.S. 163-22(e) reads as rewritten:

"(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, talley sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county ~~and municipal~~ boards of elections the registration application forms required pursuant to G.S. ~~163-67.~~ 163-82.3. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms."

Section 6.(b) G.S. 163-33(10) reads as rewritten:

"(10) To appoint and remove the board's clerk, assistant clerks, and other employees; and to appoint and remove precinct transfer assistants as provided in G.S. ~~163-72.3.~~ 163-82.15(g)."

Section 6.(c) G.S. 163-82.4(b) reads as rewritten:

"(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. -- The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. ~~163-275(a).~~ 163-275(4).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes."

Section 6.(d) G.S. 163-82.4(c) reads as rewritten:

"(c) Party Affiliation or Unaffiliated Status. -- The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation,

the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. ~~163-116,~~ 163-119, but may vote in any other primary or general election. The application form shall so state."

Section 6.(e) G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. -- If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. ~~163-72(e),~~ 163-82.15, before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

Section 6.(f) G.S. 163-150(a) reads as rewritten:

"(a) Checking Registration. -- A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. ~~163-116,~~ 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration records, the chief judge shall state whether the person seeking to vote is duly registered."

Section 6.(g) G.S. 163-150(b) reads as rewritten:

"(b) Distribution of Ballots; Information. -- If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in G.S. 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others, except that unaffiliated voters who are permitted to vote in a party primary under G.S. ~~163-116~~ 163-119 shall be furnished ballots for that primary. No such unaffiliated voter shall vote in the primary of more than one party on the same day. It shall be the duty of the chief judge and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the chief judge

and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires."

Section 6.(h) G.S. 163-274(13) reads as rewritten:

"(13) Except as authorized by G.S. ~~163-72.2(b),~~ 163-82.15, for any person to provide false information, or sign the name of any other person, to a written report under G.S. ~~163-72.2.~~ 163-82.15."

Section 6.(i) G.S. 163-275(14) reads as rewritten:

"(14) For any officer ~~authorized by G.S. 163-80~~ to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. ~~163-72;~~ 163-82.4; or".

Section 6.(j) G.S. 163-213.2 reads as rewritten:

"**§ 163-213.2. Primary to be held; date; qualifications and registration of voters.**

On the Tuesday after the first Monday in May, 1992, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. ~~163-67~~ 163-82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

Section 6.(k) G.S. 163-253 reads as rewritten:

"**§ 163-253. Article inapplicable to persons after change of status; reregistration required.**

Upon discharge from the armed forces of the United States or termination of any other status qualifying him to register and vote by absentee ballot under the provisions of this Article, the voter shall not be entitled to vote by military absentee ballot, and if he was registered under the provisions of this Article his registration shall become void and he shall be required to register under the provisions of Article ~~7~~ 7A before being entitled to vote in any primary or election."

Section 6.(l) G.S. 163-254 reads as rewritten:

"**§ 163-254. Registration and voting on primary or election day.**

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person entitled to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to register in person at any time including the day of a primary or election. Should such person's eligibility to register or vote as provided in G.S. 163-245 terminate after the ~~registration records have closed~~ twenty-fifth day prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified ~~during the time the records are closed,~~ after the twenty-fifth day before the primary

or election, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified."

Section 6.(m) G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by check only. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of ~~less than~~ fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of ~~less than~~ fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1072
Committee Substitute Favorable 4/21/99
Proposed Senate Committee Substitute -- H1072-PCSRR-006

Short Title: Election Law Cleanup. (Public)

Sponsor:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

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~~The chairman of the county or city board of elections shall not issue a certification of election or nomination or the results of a referendum if there is an election contest pending before the county or city board of election or before the State Board of Elections on appeal or otherwise.~~

~~Appeals from a decision of the State Board of Elections shall be to the Superior Court of Wake County.~~

~~A copy of the State Board of Elections' final decision shall be served on the parties personally or by certified mail. After the decision by the State Board of Elections has been served on the parties, the certification of election shall issue unless the appealing party petitions the Superior Court of Wake County for a stay of the certification within 10 days after the date of service.~~

~~The Superior Court of Wake County shall not issue a stay of certification unless the petitioner shows the court that he intends to appeal the decision of the State Board of Elections and that he is likely to prevail and that the results of the election would be changed in his favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.~~

A copy of the final decision of the State Board of Elections in a contested election shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision. An aggrieved party has the right to appeal the final decision within 10 days of the date of service. After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service.

Appeals from a decision of the State Board of Elections shall be to the Superior Court of Wake County. The court shall not issue a stay of certification of nomination or election or the results of a referendum unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, that the petitioner is likely to prevail, and that the results of the election would be changed in the petitioner's favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.

The chair of the county or municipal board of elections shall not issue a certification of nomination or election or the results of a referendum until 10 days after service of a final decision in an election contest or until an election contest is dismissed. No certification shall issue while an election contest is pending before the county, municipal, or State board of elections on appeal or otherwise."

-- REENACTING AND RECODIFYING PROVISIONS OF PRE-1995 VOTER REGISTRATION ARTICLE THAT WERE INADVERTENTLY DROPPED IN ENACTMENT OF ARTICLE 7A OF CHAPTER 163.

Section 3.(a) Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-37. Duty of county board of commissioners.**

The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections."

Section 3.(b) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-131. Accessible polling places.**

(a) The State Board of Elections shall promulgate rules to assure that any disabled or elderly voter assigned to an

inaccessible polling place, upon advance request of such voter, will be assigned to an accessible polling place. Such rules should allow the request to be made in advance of the day of the election.

(b) Words in this section have the meanings prescribed by P.L. 98-435, except that the term 'disabled' in this section has the same meaning as 'handicapped' in P.L. 98-435."

-- CLARIFYING THE STATUTES CONCERNING CANDIDATE VACANCIES IN THE NONPARTISAN ELECTION OF JUDGES.

Section 4.(a) G.S. 163-327 reads as rewritten:

"**§ 163-327. ~~Death~~ Vacancies of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. -- If a candidate for nomination in a primary ~~dies,~~ dies or becomes ~~disqualified, or withdraws~~ disqualified 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 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."

Section 4.(b) G.S. 163-328 reads as rewritten:

"**§ 163-328. Failure of candidates to file; death or other disqualification 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 or Other Disqualification 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 or otherwise becomes disqualified before the election and before

the ballots are printed, the State Board of Elections shall, upon notification of the ~~death,~~ death or other disqualification, 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,~~ death or other disqualification, 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~~ Vacancy Caused by 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, other disqualification, or resignation, 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~~ vacated candidate shall remain on the ballots. If a ~~deceased~~ vacated 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."

-- CONFORMING THE STATUTES TO COURT RULINGS CONCERNING PETITIONS AND MAKING OTHER TECHNICAL CHANGES TO THE PETITION STATUTES.

Section 5.(a) G.S. 163-96(b) reads as rewritten:

"**§ 163-96. "Political party" defined; creation of new party.**

(a) Definition. -- A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the

total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. -- Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ..... COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ..... AND WHOSE STATE CHAIRMAN IS ....., RESIDING AT..... AND WHO CAN BE REACHED BY TELEPHONE AT..... THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

~~The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:~~

~~(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments,~~

~~after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or~~

~~(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.~~

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections ~~shall require a fee of five cents (5¢) for each signature appearing and~~ shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are ~~presented and the required fee received.~~ presented.

(c) Repealed by Session Laws 1983, c. 576, s. 3."

Section 5.(b) G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. ~~Each~~ No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. ~~The~~ Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are ~~presented and a fee of five cents (5¢) for each name appearing on the petition has been received.~~ presented.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by

the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The

procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions ~~and affidavit~~ have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Section 5.(c) G.S. 163-123(c)(1) reads as rewritten:

"(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. ~~Before being filed with the State Board of Elections,~~ No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. ~~The~~ Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is

presented. ~~At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.~~"

-- CLEAN UP CHANGES AS A RESULT OF SESSION LAW 1999-31.

Section 6.(a) G.S. 163-278.6(14) reads as rewritten:

"(14) The term 'political committee' means a combination of two or more individuals, ~~or~~ such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a 'political committee' under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report."

Section 6.(b) G.S. 163-278.6(18b) reads as rewritten:

"(18b) The term 'referendum committee' means a combination of two or more individuals ~~or any business entity, corporation, insurance company, labor union, professional association,~~ such as a committee, association, ~~or~~ organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary ~~or incidental~~ purpose of which is to support or oppose the passage of any referendum on the ~~ballot, or to influence or attempt to influence the result of a referendum, or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the outcome of any referendum, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of a referendum already held.~~ ballot. If the entity qualifies as a 'referendum committee' under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report."

Section 6.(c) G.S. 163-278.23 reads as rewritten:

"**§ 163-278.23. Duties of Executive Secretary-Director of Board.** The Executive Secretary-Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The

Executive Secretary-Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, ~~or media~~ media, or other entity that may be required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum ~~committee or media~~ committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum ~~committee or media~~ committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Secretary-Director of the Board of Elections shall issue written rulings to ~~candidates and may issue written rulings to~~ candidates, the communications media, political committees, ~~and~~ referendum ~~committees~~ committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such ruling so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, ~~or~~ referendum ~~committees~~ committees, or other entities rely on and comply with the ruling of the Executive Secretary-Director of the Board of Elections, then prosecution on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Secretary-Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports."

Section 6.(d) This section is effective when this act becomes law.

-- CORRECTING MISCITATIONS AND OTHER TECHNICAL ERRORS IN THE ELECTIONS STATUTES.

Section 7.(a) G.S. 163-22(e) reads as rewritten:

"(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, talley sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county ~~and municipal~~ boards of elections the registration application forms required pursuant to G.S. ~~163-67.~~ 163-82.3. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms."

Section 7.(b) G.S. 163-33(10) reads as rewritten:

"(10) To appoint and remove the board's clerk, assistant clerks, and other employees; and to appoint and remove precinct transfer assistants as provided in G.S. ~~163-72.3.~~ 163-82.15(g)."

Section 7.(c) G.S. 163-82.4(b) reads as rewritten:

"(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. -- The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. ~~163-275(a).~~ 163-275(4).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain

confidential and will be used only for voter registration purposes."

Section 7.(d) G.S. 163-82.4(c) reads as rewritten:

"(c) Party Affiliation or Unaffiliated Status. -- The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. ~~163-116,~~ 163-119, but may vote in any other primary or general election. The application form shall so state."

Section 7.(e) G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. -- If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. ~~163-72(c),~~ 163-82.15, before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

Section 7.(f) G.S. 163-150(a) reads as rewritten:

"(a) Checking Registration. -- A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary

election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. ~~163-116,~~ 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration records, the chief judge shall state whether the person seeking to vote is duly registered."

Section 7.(g) G.S. 163-150(b) reads as rewritten:

"(b) Distribution of Ballots; Information. -- If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in G.S. 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others, except that unaffiliated voters who are permitted to vote in a party primary under G.S. ~~163-116~~ 163-119 shall be furnished ballots for that primary. No such unaffiliated voter shall vote in the primary of more than one party on the same day. It shall be the duty of the chief judge and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the chief judge and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires."

Section 7.(h) G.S. 163-274(13) reads as rewritten:

"(13) Except as authorized by G.S. ~~163-72.2(b),~~ 163-82.15, for any person to provide false information, or sign the name of any other person, to a written report under G.S. ~~163-72.2.~~ 163-82.15."

Section 7.(i) G.S. 163-275(14) reads as rewritten:

"(14) For any officer ~~authorized by G.S. 163-80~~ to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. ~~163-72;~~ 163-82.4; or".

Section 7.(j) G.S. 163-213.2 reads as rewritten:

"§ 163-213.2. Primary to be held; date; qualifications and registration of voters.

On the Tuesday after the first Monday in May, 1992, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. ~~163-67~~ 163-82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

Section 7.(k) G.S. 163-253 reads as rewritten:

"**§ 163-253. Article inapplicable to persons after change of status; reregistration required.**

Upon discharge from the armed forces of the United States or termination of any other status qualifying him to register and vote by absentee ballot under the provisions of this Article, the voter shall not be entitled to vote by military absentee ballot, and if he was registered under the provisions of this Article his registration shall become void and he shall be required to register under the provisions of Article ~~7~~ 7A before being entitled to vote in any primary or election."

Section 7.(l) G.S. 163-254 reads as rewritten:

"**§ 163-254. Registration and voting on primary or election day.**

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person entitled to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to register in person at any time including the day of a primary or election. Should such person's eligibility to register or vote as provided in G.S. 163-245 terminate after the ~~registration records have closed~~ twenty-fifth day prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified ~~during the time the records are closed,~~ after the twenty-fifth day before the primary or election, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified."

Section 7.(m) G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by check only.

All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of ~~less than~~ fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of ~~less than~~ fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

Section 8. This act is effective when it becomes law.

HOUSE BILL 1072:
Election Law Cleanup.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Alexander and Bonner
Date:	July 6, 1999	**Summary by:**	William R. Gilkeson
Version:	H1072-PCSRR-006		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for House Bill 1072 would make seven basicly technical changes to the election statutes. Section 6, concerning campaign finance statutes, is the only part of the bill that has been added since the bill's passage by the House.***

BILL ANALYSIS: The bill is divided into seven main sections:

1. Clarifying the Role of the State Board of Elections in the Process of Ordering New Elections. The State Board of Elections now has the authority to order new elections after holding hearings. The State Board may order a new election without holding a hearing of its own, if a county board of elections has held an adequate hearing. The current statute has language that might lead one to believe that the State Board can only rely on a county board's hearing if the State Board agrees with the county board's conclusions. The bill removes that language, allowing the State Board to rely on the evidence at a county board's hearing but draw a different conclusion from it.
2. Clarifying the Appeal Process in Contested Elections. The section of the statutes governing appeals from contested-election decisions by the State Board has led to confusion. It could be interpreted to mean that a candidate can hold up the certification of an election simply by *applying* for a stay from Superior Court within 10 days. The bill changes the language to say that the certification must go forward unless the petitioner *obtains* a stay from court within 10 days.
3. Reenacting Provisions of the pre-1995 Voter Registration Laws that Were Inadvertently Dropped. When a new Voter Registration Law was enacted in 1994 (effective 1995), the entire old Article 7 was repealed and a new Article 7A was enacted to replace it. Almost all the essentials of the old Article were reenacted, but 2 were inadvertently left out. One was the sentence that gives the boards of county commissioners the duty to fund elections. The other was the duty of the State Board to make rules for accessible polling places. The county commissioners still have the duty to fund elections, but only because the part of the 1994 bill repealing the important sentence was withdrawn from submission under the Voting Rights Act. The bill would put the sentence back in the statutes, just as it appeared in the old law.
4. Clarifying Candidate Vacancies in Nonpartisan Judicial Elections. The statute governing the nonpartisan election of Superior Court judges has some inconsistent language. Basically, the law seems to say that after filing, but before a primary, a candidate is not permitted to resign. After nomination in the primary, the candidate may resign. At any time, of course, a candidate may either die or become disqualified through felony conviction or by change of residency. The language of the current statute does not always consistently reflect that pattern. The bill attempts to make the language consistent.

5. Cleaning Up the Petition Statutes. This section concerns statutes governing the gathering and submitting of signatures on petitions for new parties, unaffiliated candidates, and write-in candidates. All those statutes contain requirements that have been invalidated by courts: notarization of the signatures and a fee of 5 cents per name. Those requirements are not now being enforced. The bill would take the requirements off the books. The bill would also add to the unaffiliated and write-in statutes a requirement that already exists in the new-party statutes: When the petitions must be filed with the State Board of Elections on a certain day, after they have already been filed with the county boards for verification of the signatures, the bill would require the petitions to be filed with the county board 15 days before the day they must be filed with the State Board.

6. Making Cleanup Changes as a Result of the Campaign Finance Repair Bill. After the 4th Circuit U.S. Court of Appeals invalidated much of North Carolina's campaign finance law in *N.C. Right to Life v. Bartlett* this year, the General Assembly repaired the law by passing House Bill 921, enacted as Session Law 1999-31. Several questions have arisen since the passage of that act. This section addresses three that appeared to lend themselves to technical changes:

   a. *"Political Committee" Definition.* The American Civil Liberties Union raised the concern that the new definition of "political committee," like the old, invalidated one, could be interpreted to catch individuals who discuss an election and decide to write separate checks to a politician. The definition includes "a combination of two or more individuals, or..." and then lists various synonyms for organization. To indicate that a combination of individuals does not become a political committee unless it forms an organization and contributes or expends through that organization, the PCS would change the language in the definition to "a combination of two or more individuals such as....." and then lists the types of organizations. Debra Ross of the ACLU agreed with this language.

   In another change to the political committee definition, the PCS adds language to the rebuttable presumption. The current law says that a rebuttable presumption is raised that a group has as a major purpose to support or oppose the nomination or election of one or more clearly identifiable candidates if that group contributes or expends more than $3,000 for that purpose in an election cycle. The PCS adds the statement that a group may rebut the assumption by showing that the contributions and expenditures giving rise to the presumption were not a major part of its activities during the election cycle.

   b. *"Referendum Committee" Definition.* Although the repair bill redefined "political committee" to remove language the 4th Circuit found overbroad, the bill did nothing to the definition of referendum committee. That definition had not been challenged in the *Right to Life* case, but it contained some of the same language, making an organization a referendum committee if it had as an "incidental purpose" to "influence the result of a referendum." In the course of removing that language, another problem was noticed. As the definition was worded, it appeared that a business corporation or union could itself be viewed as a referendum committee if it expended money to support or oppose a referendum. The U.S. Supreme Court has said that in referenda, unlike in candidate elections, a State may not prohibit contributions and expenditures by corporations. It may not even limit them. State law recognizes this fact in its definition of referendum committee, which includes references to corporations and unions. But the definition could be read to say that if a corporation spends money to support a referendum, the corporation itself is a referendum committee and must make a full accounting of its finances in reports to the board of elections. The law has not been enforced that way. The PCS addresses this problem by use of the "such as" language. A referendum committee is a "combination of two or more individuals such as (various types of organizations)" and a "combination of two or more ...corporations such as (various types of organizations)." So a single corporation would not be a referendum committee; a combination of corporations would be. If a single corporation on its own made a contribution or expenditure over $100, it would have to make a special report of it under G.S. 163-278.12.

c. *Rulings by the Executive Secretary-Director.* Current law says that the Executive Secretary-Director of the State Board of Elections must give written rulings on campaign finance practices to candidates and may give them upon request to the media, political committees and referendum committees. Such a written ruling, if followed, bars prosecution. The repair bill opens up the possibility that groups other than political committees (e.g., certain nonprofit corporations) may be making contributions and expenditures. The PCS adds "other entities" to the list that may request a ruling from the Director, and requires the Director to give them, changing "may" to "shall." This change also states that before the Director takes any action under the campaign finance law against someone complained of, that entity must be given an opportunity to respond.

7. Miscellaneous Corrections. This section corrects 13 instances where of wrong citations or other errors in the election statutes. In one instance, a statute says what must be done if the amount is more than $50 and what must be done if the amount is less than $50, but not what must be done if the amount is $50. The bill corrects those errors.

The bill would be effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, July 06, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

H.B.(CS #1)**1072** Election Law Cleanup

Draft Number:	PCS A161
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 873

Short Title: Improve Registered Documents. (Public)

Sponsors: Senators Dalton; Albertson, Hagan, Kerr, Lee, Miller, Phillips, Reeves, Soles, and Wellons.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-54.3(b) reads as rewritten:

"(b) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to all of the following aspects of land records management:

(1) Uniform indexing of land ~~records;~~ records.

(2) Uniform recording and indexing procedures for maps, plats and ~~condominiums; and~~ condominiums.

(3) Security and reproduction of land records.

(4) Uniform recording standards for land records."

Section 2. G.S. 147-54.3(b1) reads as rewritten:

"(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing and recording standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards

adopted shall be posted in the office of the register of deeds in each county of the State."

Section 3. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. -- For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be six dollars ($6.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00), for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. -- For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ten dollars ($10.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. -- For issuing a license forty dollars ($40.00); for issuing a delayed certificate with one certified copy five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy five dollars ($5.00).

(3) Plats. -- For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00).

(4) Right-of-Way Plans. -- For each original or amended plan and profile sheet recorded five dollars ($5.00). This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. -- For preparation of necessary papers when birth to be registered in another county five dollars ($5.00); for registration when necessary papers prepared in another county, with one certified copy five dollars ($5.00); for preparation of necessary papers and registration in the same county, with one certified copy ten dollars ($10.00).

(6) Amendment of Birth or Death Record. -- For preparation of amendment and affecting correction two dollars ($2.00).

(7) Legitimations. -- For preparation of all documents concerned with legitimations seven dollars ($7.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. -- For furnishing a certified copy of a death or birth certificate or marriage license three dollars ($3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(9) Certified Copies. -- For furnishing a certified copy of an instrument for which no other provision is made by this section three dollars ($3.00) for the first page, plus one dollar ($1.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. -- For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof two dollars ($2.00).

(11) Uncertified Copies. -- When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(12) Notarial Acts. -- For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. -- Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.
(14) Torrens Registration. -- Such fees as are provided in G.S. 43-5.
(15) Master Forms. -- Such fees as are provided for instruments in general.
(16) Probate. -- For certification of instruments for registration as provided in G.S. 47-14 two dollars ($2.00).
(17) Qualification of Notary Public. -- For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10A-8 five dollars ($5.00).
(18) Reinstatement of Articles of Incorporation. -- For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.
(19) Nonstandard Document. -- For registering a land records document not in compliance with the recording standards adopted pursuant to G.S. 147-54.3(b1) thirty dollars ($30.00), in addition to all other applicable recording fees."

Section 4. G.S. 161-14 reads as rewritten:

"**§ 161-14. Registration of instruments.**

(a) ~~The~~ After the register of deeds determines that all statutory requirements for registration have been met, the register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. He shall then proceed to register it on the day that it is presented unless a temporary index has been established.

(b) The register of deeds may, in his discretion, establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate in all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not later than 30 days after the date of presentation.

~~(b) All instruments presented for registration shall be on paper and in ink of a color, quality, size, and condition that will permit the production of legible and permanent reproductions thereof by photographic or microphotographic processes. If an instrument presented for registration is in a condition that will not permit such reproduction, the register of deeds shall endorse thereon the following notation: "Record of poor quality due to condition of original document." He shall then register the instrument in the usual manner.~~"

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S873-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 873
THIS IS A DRAFT 2-JUL-99 16:23:57
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Improved Registered Documents Study. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY WAYS TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is authorized to study ways to improve the quality of documents recorded in the office of the register of deeds.

Section 2. As part of its study, the Commission shall study the issues addressed in the first edition of Senate Bill 873 and the second edition of House Bill 1066, both of the 1999 General Assembly.

Section 3. The Commission may make an interim report of its recommendations regarding ways to improve the quality of documents recorded in the office of the register of deeds to the 2000 Regular Session of the 1999 General Assembly and shall make a final report to the 2001 Regular Session of the 2001 General Assembly.

Section 4. This act is effective when it becomes law.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1216-PCSSE-001
PROPOSED COMMITTEE SUBSTITUTE
House Bill 1216
THIS IS A DRAFT 30-JUN-99 12:53:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Juvenile Justice Technical Corrections. (Public)

Sponsors:

Referred to:

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."

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"**§ 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).

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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

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(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,~~ Correction, the Director of the Office of Juvenile Justice, 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,~~ Safety, the Assistant Director of the Intervention/Prevention Bureau of the Office of Juvenile Justice, the Assistant Director of the Detention Bureau 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.~~ the Director of the Office of Juvenile Justice, the Assistant Director of the Intervention/Prevention Bureau of the Office of Juvenile Justice, the Assistant Director of the Detention Bureau of the Office of Juvenile Justice, 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. G.S. 7B-2413,as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-2413. Predisposition investigation and report.**

The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts, shall be conducted for the juvenile and shall be attached to the predisposition report. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing. No predisposition report or risk and needs assessment of any child alleged to be delinquent or undisciplined shall be made prior to an adjudication that the juvenile is within the juvenile jurisdiction of the court unless the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney files a written statement with the court counselor granting permission and giving consent to the predisposition report or risk and needs assessment. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court shall permit the juvenile to inspect any predisposition report, including any attached risk and needs assessment, to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information."

Section 14. G.S. 7B-1905(a), as enacted by S.L. 1998-202, reads as rewritten:

"(a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in nonsecure custody with a department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care;
(2) A facility operated by a department of social services; or
(3) Any other home or facility approved by the court and designated in the order.

In placing a juvenile in nonsecure custody, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile. If the court finds that the relative is willing and able to provide proper care and supervision, the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interest of the juvenile. Placement of a juvenile outside of this State shall be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter."

Section 15. G.S. 147-33.62 reads as rewritten:

"**§ 147-33.62. Terms of appointment.**

Each member of a Juvenile Crime Prevention Council shall serve for a term of two ~~years.~~ years, except for initial terms as provided in this section. Members may be reappointed. ~~Terms~~ The initial terms of appointment shall begin January 1, 1999. All subsequent terms of appointment shall begin on July 1. 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. 147-33.61(a) shall be appointed for an initial ~~one-year~~ term ending on June 30, 2000 and two-year terms thereafter. All other persons appointed to the Council shall be appointed for an initial term ending on June 30, 2001 and two-year terms thereafter."

Section 16. G.S. 147-33.64 reads as rewritten:

"**§ 147-33.64. Meetings; quorum.**

Councils shall meet at least ~~once per month,~~ bi-monthly, or more often if a meeting is called by the chair.

A majority of members shall constitute a quorum."

Section 17. This act becomes effective July 1, 1999.

HOUSE BILL 1216:
Juvenile Justice Technical Corrections

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Rep. Baddour
Date:	July 6, 1999	**Summary by:**	Jo B. McCants
Version:	H1216-PCSSE-001		Committee Co-Counsel

SUMMARY: The proposed committee substitute for 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". In juvenile proceedings, a juvenile who commits a criminal offense is found to be delinquent and not guilty. The phrase "adjudicated delinquent" is used throughout the Act, and the correction was missed in the final version.

Section 2. Deletes the sentence that provides that a juvenile who fails to appeal the transfer to superior court waives the right to raise the issue of transfer in the Court of appeals because the sentence is inconsistent with subsection (d) of G.S. 7B-2603. G.S. 7B-2603 (d) provides in part that the issue of transfer may be appealed to the Court of appeals after the juvenile has been convicted in superior court.

Section 3. Changes an incorrect statutory 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 statutory 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 no longer exists.

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. Adds the Director of Juvenile Justice to the list of voting members of the Governor's Crime Commission of the Department of Crime Control and Public Safety. Also, adds the Assistant Director of the Intervention/Prevention Bureau and Assistant of Director of the Detention Bureau of the Office of Juvenile Justice to the Governor's Crime Commission as nonvoting members. 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.

Section 13. Incorporates a provision that is in the current juvenile law, but was inadvertently left out of the new juvenile code. The provision requires the consent of a juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney before a prehearing risk and needs assessment of a child who has been alleged delinquent or undisciplined can be prepared prior to an adjudication that the juvenile is within the juvenile jurisdiction of the court.

Section 14. Adds the provision that a child in nonsecure custody be placed with a relative "**unless the court finds that placement with the relative would be contrary to the best interest of the juvenile.**" This provision is currently contained in G.S. 7B-505 (Place of nonsecure custody) which addresses juveniles who are in nonsecured custody because of alleged abuse, neglect, or dependency.

Section 15. Makes the term of office for Juvenile Crime Prevention Council members begin on July 1 to correspond with the fiscal year, rather than having the terms begin on January 1.

Section 16. Changes the frequency of the meetings of the Juvenile Crime Prevention Council members from at least once per month to bi-monthly.

Section 17. This act becomes effective July 1, 1999.

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*Esther Manheimer contributed to the preparation of this summary.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Wednesday, July 07, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

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

S.B. **873** Improve Registered Documents

Draft Number:	PCS 8621
Sequential Referral:	None
Recommended Referral:	Rules
Long Title Amended:	Yes

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

H.B. **1216** Juvenile Justice Technical Corrections

Draft Number:	PCS A162
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

(1)

VISITOR REGISTRATION SHEET

Judiciary I — Name of Committee

7-6-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
LARRY DIX	OTI
Paula A. Wolf	Covenant w/NC's Children
Deborah Ross	ACLU
[signature]	AOC
Yvonne Southerland	State Bd of Elections
John Phelps	NCLM
Johnnie McLean	SBE
Steve Metcalf	Senate
	V

MINUTES
SENATE JUDICIARY I COMMITTEE
JULY 8, 1999

The Senate Judiciary I Committee met on July 8, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Bridgeman to explain **House Bill 293 – AN ACT TO AUTHORIZE THE STATE BOARD OF COMMUNITY COLLEGES TO ASSESS MONETARY PENALTIES AGAINST PROPRIETARY SCHOOLS THAT OPERATE WITHOUT A LICENSE OR OPERATE OUTSIDE THE SCOPE OF THEIR LICENSE.**

Senator Hoyle moved to give House Bill 293 a favorable report. The motion carried by a majority voice vote.

In the absence of Representative Wainwright, John Kerr representing the Funeral Directors Association was recognized to explain **House Bill 247 – AN ACT TO REGULATE FUNERAL PROCESSIONS AND TO CODIFY THE RULES OF THE ROAD WITH REGARD TO FUNERAL PROCESSIONS.**

Senator Lucas moved to adopt a Proposed Committee Substitute to House Bill 247 for discussion. The motion carried by a majority voice vote.

Senator Allran moved to give the Proposed Committee Substitute to House Bill 247 a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: **Thursday, July 8, 1999**
TIME: **10:00 a.m.**
ROOM: **1027**

The following bills or resolutions will be considered:

HB 247	**Funeral Processions**	**Wainwright**
HB 293	**Proprietary School/Civil Pen.**	**Bridgeman/Tolson**

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - July 8, 1999

HB 247	Funeral Processions	Wainwright
HB 293	Proprietary School/Civil Pen.	Bridgeman/Tolson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 293
Committee Substitute Favorable 4/14/99
Senate Education/Higher Education Committee Substitute Adopted 6/3/99

Short Title: Proprietary Sch./Civil Penalties/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF COMMUNITY COLLEGES TO ASSESS MONETARY PENALTIES AGAINST PROPRIETARY SCHOOLS THAT OPERATE WITHOUT A LICENSE OR OPERATE OUTSIDE THE SCOPE OF THEIR LICENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-93.1. Operation without a license or outside scope of license; penalty.**

Upon its determination that a person is in violation of this Article, the State Board shall immediately notify the person and may assess a civil penalty not to exceed one thousand dollars ($1,000) against that person. In determining the amount of this penalty, the State Board shall consider the degree and extent of harm or potential harm caused by the violation. In addition, beginning on the thirtieth day following the date the Board makes this determination and sends the required notification, the person is liable for a civil penalty of one hundred dollars ($100.00) for each day the person continues to be in violation of this Article. A person is in violation of this Article if the person owns or operates a proprietary school (i) that is operating in the State without a license as required under this Article or (ii) that is offering a program of instruction, course, or subject that is not specifically indicated in the school's application for a license under this Article. Civil penalties assessed under this section

may be in addition to any other penalties or sanctions the State Board may impose for violation of this Article. This section is subject to Articles 3 and 4 of Chapter 150B of the General Statutes. The clear proceeds of civil penalties assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Section 2. G.S. 115D-87 is amended by adding a new subdivision to read:

"(3a) 'Proprietary school' means a correspondence school, a proprietary business school, a proprietary trade school, or a proprietary technical school as defined in this section."

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

HOUSE BILL 293:
Proprietary Sch./Civil Penalties/AB

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Bridgeman
Date:	July 8, 1999	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Third Edition		

SUMMARY: ***House Bill 293 is an agency bill that gives additional enforcement authority to the State Board of Community Colleges to assess a penalty of up to $1,000 against any person who owns or operates a proprietary school prior to being issued a license as is currently required by law. The State Board would also be able to assess a similar fine against any person who owns or operates a proprietary school that offers instruction or courses not included in the school's application for its license. Violations continuing 30 days or more are also subject to a $100 a day fine as long as the violation continues.***

CURRENT LAW: The State Board of Community Colleges is charged with licensing all proprietary business schools, proprietary trade schools, proprietary technical schools, and correspondence schools. These are private institutions operated for a profit and do not include established universities, colleges, or private schools operating under Chapter 115C. The State Board formulates the criteria and standards for approving proprietary schools based upon the course or courses of study that will be offered. G.S. 115D-90(a) provides that no person shall operate a proprietary school until the State Board has issued a license for its operation. G.S. 115D-90(d) provides that a license is restricted to the programs, courses, and subjects included in the proprietary school's application, and the holder of the license must submit a supplementary application if it intends to expand its program of instruction.

The State Board may suspend, revoke, or refuse to issue or renew a license under specified circumstances including the failure to comply with applicable laws and rules, providing false or misleading information on the license application, committing fraud in advertising, failing to maintain the school premises in a safe condition, employing teachers who have not been approved by the State Board, and failing to obtain and maintain a guaranty bond or its equivalent. If a school offers courses or subjects that were not specifically indicated in the school's application for license, the State Board may suspend, revoke, or refuse to renew its license.

The current enforcement provisions for a violation of this law is punishment as a Class 3 misdemeanor and providing that any contracts entered into by a school in violation of this law are unenforceable against any student.

BILL ANALYSIS: House Bill 293 gives the State Board an additional enforcement tool. In addition to the other sanctions, the State Board is authorized to assess fines of up to $1,000 against a person who owns or operates a proprietary school before receiving a license or who operates with a license but expands its program of instruction beyond the scope of the school's existing license. In determining the amount of the fine, the Board is to consider the degree and extent of harm or potential harm caused by the violation. In addition, any person who continues to violate this law 30 days after receiving notice of the

violation and assessment of the fine, will be liable for a fine of $100 per day beginning on the 30th day that the violation continues and this daily fine shall continue to be assessed as long as the violation continues. This authority would be in addition to the other penalties and sanctions described above. Both the contested case provisions and the judicial review provisions of the Administrative Procedures Act would apply to the State Board's enforcement actions taken under the provisions of this bill.

All the clear proceeds of fines collected under this bill would be remitted to the Civil Penalty and Forfeiture Fund in accordance with Article IX, Section 7 of the North Carolina Constitution and Article 31A of Chapter 115C of the General Statutes. Under Article 31A, these funds are then transferred to the School Technology Trust fund and allocated to local school administrative units on the basis of average daily membership.

The bill also adds a definition for the term "proprietary school" in the Article governing proprietary schools. The term is defined as "a correspondence school, a proprietary business school, a proprietary trade school, or a proprietary technical school." All of those terms are currently defined in that article.

EFFECTIVE DATE: The bill would become effective October 1, 1999 and would apply to offenses committed on or after that date.

Kory Goldsmith, staff to the House Education Committee, and Cindy Avrette, staff to the House Finance Committee, contributed to this summary.

H293-SMRU-001

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Thursday, July 08, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS #1)	**293**	Proprietary School/Civil Penalties/AB
		Sequential Referral: None
		Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 247
Committee Substitute Favorable 4/5/99
Committee Substitute #2 Favorable 4/14/99

Short Title: Funeral Processions. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE FUNERAL PROCESSIONS AND TO CODIFY THE RULES OF THE ROAD WITH REGARD TO FUNERAL PROCESSIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-157.1. Funeral processions.**

(a) As used in this section, a 'funeral procession' means two or more vehicles accompanying the remains of a deceased person, or traveling to the church, chapel, or other location at which the funeral services are to be held, in which the lead vehicle is either a State or local law enforcement vehicle, other vehicle designated by a law enforcement officer or the funeral director, or the lead vehicle displays a flashing amber or purple light, sign, pennant, flag, or other insignia furnished by a funeral home indicating a funeral procession.

(b) Each vehicle in the funeral procession shall be operated with its headlights illuminated, if so equipped, and its hazard warning signal lamps illuminated, if so equipped.

(c) The operator of the lead vehicle in a funeral procession shall comply with all traffic-control signals, but when the lead vehicle in a funeral procession has progressed across an intersection in accordance with the traffic-control sign or signal, or when directed to do so by a law enforcement officer or a designee of a law

enforcement officer or the funeral director, or when the lead vehicle is a law enforcement vehicle which progresses across the intersection while giving appropriate warning by light or siren, all vehicles in the funeral procession may proceed through the intersection without stopping, except that the operator of each vehicle shall exercise reasonable care towards any other vehicle or pedestrian on the highway. An operator of a vehicle that is not part of the funeral procession shall not join the funeral procession for the purpose of securing the right-of-way granted by this subsection.

(d) Operators of vehicles in a funeral procession shall drive on the right-hand side of the roadway and shall follow the vehicle ahead as closely as reasonable and prudent having due regard for speed and existing conditions.

(e) Operators of vehicles in a funeral procession shall yield the right-of-way to law enforcement vehicles, fire protection vehicles, rescue vehicles, ambulances, and other emergency vehicles giving appropriate warning signals by light or siren, and shall yield the right-of-way when directed to do so by a law enforcement officer.

(f) Operators of vehicles in a funeral procession shall proceed at the posted minimum speed, except that the operator of such vehicle shall exercise reasonable care having due regard for speed and existing conditions.

(g) The operator of a vehicle proceeding in the opposite direction as a funeral procession may yield to the funeral procession. If the operator chooses to yield to the procession, the operator must do so by reducing speed, or by stopping completely off the roadway when meeting the procession or while the procession passes, so that operators of other vehicles proceeding in the opposite direction of the procession can continue to travel without leaving their lane of traffic.

(h) The operator of a vehicle proceeding in the same direction as a funeral procession shall not pass or attempt to pass the funeral procession, except that the operator of such a vehicle may pass a funeral procession when the highway has been marked for two or more lanes of moving traffic in the same direction of the funeral procession.

(i) An operator of a vehicle shall not knowingly drive between vehicles in a funeral procession by crossing their path unless directed to do so by a person authorized to direct traffic. When a funeral procession is proceeding through a steady or strobe-beam stoplight emitting a red light as permitted by subsection (c), an operator of a vehicle that is not in the funeral procession shall not enter the intersection knowing a funeral procession is in process, even if facing a steady or strobe-beam stoplight emitting a green light, unless the operator can do so safely without crossing the path of the funeral procession.

(j) Nothing in this section shall be construed to prevent State or local law enforcement officers from escorting funeral processions in law enforcement vehicles.

(k) A violation of this section shall not constitute negligence per se.

(l) Liability for any death, personal injury, or property damage suffered by any person participating in a funeral procession or colliding with any vehicle in a funeral procession shall not be imposed upon a law enforcement officer or upon a designee of a law enforcement officer or of the funeral director, escorting or assisting the

funeral procession whether in a vehicle or on foot, the supervisor who assigned the law enforcement officer to escort or assist with the funeral procession, the funeral director or funeral establishment leading, coordinating, organizing, or participating in the funeral procession, or their employees or agents, unless such death, personal injury, or property damage is proximately caused by the negligent act of such person, firm, or corporation.

(m) To the extent that a local government unit's ordinance is in direct conflict with any part of this statute, the ordinance shall control and prevail over the conflicting part.

(n) A violation of this section shall not be considered a moving violation for purposes of G.S. 58-36-65 or G.S. 58-36-75."

Section 2. 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

H247-PCSSE-010
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 247
THIS IS A DRAFT 8-JUL-99 10:00:45
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Funeral Processions. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE FUNERAL PROCESSIONS AND TO CODIFY THE RULES OF THE ROAD WITH REGARD TO FUNERAL PROCESSIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-157.1. Funeral processions.

(a) As used in this section, a 'funeral procession' means two or more vehicles accompanying the remains of a deceased person, or traveling to the church, chapel, or other location at which the funeral services are to be held, in which the lead vehicle is either a State or local law enforcement vehicle, other vehicle designated by a law enforcement officer or the funeral director, or the lead vehicle displays a flashing amber or purple light, sign, pennant, flag, or other insignia furnished by a funeral home indicating a funeral procession.

(b) Each vehicle in the funeral procession shall be operated with its headlights illuminated, if so equipped, and its hazard warning signal lamps illuminated, if so equipped.

(c) The operator of the lead vehicle in a funeral procession shall comply with all traffic-control signals, but when the lead vehicle in a funeral procession has progressed across an intersection in accordance with the traffic-control sign or signal, or when directed to do so by a law enforcement officer or a designee of a law enforcement officer or the funeral director, or when the lead vehicle is a law enforcement vehicle which progresses across the intersection while giving appropriate warning by light or siren, all vehicles in the funeral procession may proceed through the intersection without stopping, except that the operator of each vehicle shall exercise reasonable care towards any other vehicle or pedestrian on the highway. An operator of a vehicle that is not part of the funeral procession shall not join the funeral procession for the purpose of securing the right-of-way granted by this subsection.

(d) Operators of vehicles in a funeral procession shall drive on the right-hand side of the roadway and shall follow the vehicle ahead as closely as reasonable and prudent having due regard for speed and existing conditions.

(e) Operators of vehicles in a funeral procession shall yield the right-of-way to law enforcement vehicles, fire protection vehicles, rescue vehicles, ambulances, and other emergency vehicles giving appropriate warning signals by light or siren, and shall yield the right-of-way when directed to do so by a law enforcement officer.

(f) Operators of vehicles in a funeral procession shall proceed at the posted minimum speed, except that the operator of such vehicle shall exercise reasonable care having due regard for speed and existing conditions.

(g) The operator of a vehicle proceeding in the opposite direction as a funeral procession may yield to the funeral procession. If the operator chooses to yield to the procession, the operator must do so by reducing speed, or by stopping completely off the roadway when meeting the procession or while the procession passes, so that operators of other vehicles proceeding in the opposite direction of the procession can continue to travel without leaving their lane of traffic.

(h) The operator of a vehicle proceeding in the same direction as a funeral procession shall not pass or attempt to pass the funeral procession, except that the operator of such a vehicle may pass a funeral procession when the highway has been marked for two or more lanes of moving traffic in the same direction of the funeral procession.

(i) An operator of a vehicle shall not knowingly drive between vehicles in a funeral procession by crossing their path unless directed to do so by a person authorized to direct traffic. When a funeral procession is proceeding through a steady or strobe-beam stoplight emitting a red light as permitted by subsection (c), an operator of a vehicle that is not in the funeral procession shall not enter the intersection knowing a funeral procession is in process, even if facing a steady or strobe-beam stoplight emitting a green light, unless the operator can do so safely without crossing the path of the funeral procession.

(j) Nothing in this section shall be construed to prevent State or local law enforcement officers from escorting funeral processions in law enforcement vehicles.

(k) A violation of this section shall not constitute negligence per se.

(l) To the extent that a local government unit's ordinance is in direct conflict with any part of this statute, the ordinance shall control and prevail over the conflicting part.

(m) A violation of this section shall not be considered a moving violation for purposes of G.S. 58-36-65 or G.S. 58-36-75."

Section 2. This act becomes effective December 1, 1999, and applies to violations occurring on or after that date.

HOUSE BILL 247:
Funeral Processions

BILL ANALYSIS

Committee:	Senate J1	**Introduced by:**	Rep. Wainwright
Date:	July 8, 1999	**Summary by:**	Jo B. McCants
Version:	H247-PCSSE-010		Committee Co-Counsel

SUMMARY: ***House Bill 247 adds a new section to Chapter 20 of the General Statutes, to regulate funeral processions. This bill defines the term "funeral procession" as two or more vehicles accompanying the remains of a deceased person, or traveling to the church, chapel, or other location at which the funeral services will be held, when the lead vehicle is either a State or local law enforcement vehicle, or other vehicle designated by a law enforcement officer or the funeral director. The act becomes effective on December 1, 1999.***

BILL ANALYSIS: House Bill 247 provides the following:

- Allows a funeral procession to be lead by a State or local law enforcement vehicle, some other designated official vehicle, or a vehicle displaying a flashing amber or purple light, sign, pennant, flag, or other insignia indicating a funeral procession.
- Requires all vehicles to use headlights and hazard signals while in the procession.
- Requires the lead vehicle to observe traffic signals and allows other vehicles in the procession to proceed through signals once the lead vehicle has passed, but requires the drivers to exercise reasonable care towards other vehicles or pedestrians on the highway.
- Requires the drivers in the procession to operate on the right-hand side of the road and to follow the vehicle ahead of the driver as closely as reasonable and prudent.
- Requires vehicles in the procession to yield to emergency vehicles.
- Requires the drivers in the procession to proceed at the posted minimum speed.
- Authorizes vehicles approaching the procession in the opposite direction to reduce speed or leave the roadway while the procession passes.
- Prohibits vehicles moving in the same direction as the procession from passing or attempting to pass the procession except when there are multiple lanes of travel in that direction. Also, prohibits a driver from knowingly driving between vehicles in a funeral procession by crossing their path, unless directed to do so by a person authorized to direct traffic.

This bill also provides that local ordinances regarding funeral processions take precedence over state law where the two are in conflict. No insurance points will be assessed for a violation of this Act. This act becomes effective December 1, 1999 and applies to violations occurring on or after that date.

*Susan Hayes contributed to the completion of this summary.

Explanation of House Bill 247 (Funeral Processions)

Although municipalities have adopted ordinances regulating funeral processions, there is no set of state laws specifically for funeral processions. This bill seeks to regulate funeral processions and to codify certain rules of the road with regard to funeral processions. It is substantially similar to a bill introduced in the 1993 Session, which passed the House.

Section (a) defines a "funeral procession."

Section (b) requires all vehicles in the procession to operate with headlights and hazards illuminated, if so equipped.

Section (c) requires the lead vehicle in a procession to comply with all traffic control signals, but goes on to state an exception: when the lead vehicle has gone through an intersection in accordance with a green light, or when directed to do so by a law enforcement officer, or when following a law enforcement vehicle giving appropriate warning, the funeral procession is permitted to proceed through the intersection without stopping, although vehicles must use reasonable care in doing so. A vehicle cannot join the funeral procession to secure the right-of-way permitted by this section.

Section (d) requires the procession to drive on the right-hand side of the roadway and for vehicles in the procession to follow each other as closely as reasonable and prudent given the conditions. This helps keep the procession together and helps people observe and be aware of the procession.

Section (e) requires the funeral procession to yield to law enforcement, rescue, fire and other emergency vehicles and to yield the right-of-way when directed to do so by a law enforcement officer.

Section (f) requires the procession to proceed at the posted minimum speed.

Section (g) permits a vehicle meeting a procession to show respect by reducing speed or stopping off the roadway, so long as other vehicles can continue to travel.

Section (h) prohibits a vehicle from passing a funeral procession, unless there are two lanes of traffic moving in the direction of the procession.

Section (i) prohibits an operator of a vehicle from knowingly driving between vehicles in a funeral procession. When the procession is proceeding through an intersection as provided in Section (c) of the bill, this section prohibits an operator from entering the intersection, even when facing a green light, unless the operator can do so safely without crossing the path of the procession. Note that a vehicle facing a green light would be able to make a right turn at the intersection.

Section (k) states that a violation of this statute is not negligence per se. Negligence per se would mean that a person violating this statute could be held liable without the necessity of proof of a duty and breach of that duty. As a violation of this statute is **not** negligence per se, in order to be liable for injury to another, there must be a duty under the law and a breach of that duty which proximately causes the injury.

Section (l) simply states the common law of negligence, that damage or injury must be proximately caused by a negligent act.

Section (m) provides that local ordinances which are in direct conflict with the statute control and prevail over the conflicting part of the statute. Many local governments have ordinances regarding funeral processions. This part means those local ordinances, whether in existence or adopted later, would control and have effect if in direct conflict with the statute.

Section (n) provides that a violation of this statute shall not be considered a moving violation for insurance purposes.

The bill would become effective December 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Monday, July 12, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**247** Funeral Processions

Draft Number:	PCS 3459
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

VISITOR REGISTRATION SHEET

E-I — 1-8-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ayyam Williams	NCCCS
Hal Miller	NCACCT
Mark Benson	Capital Group
Jim Braun	State Parks
Lucius Pullen	ATTORNEY
Con Diaz	CWA
Tom Coley	CWA
Boyd Cauble	City of Charlotte

MINUTES
SENATE JUDICIARY I COMMITTEE
JULY 13, 1999

The Senate Judiciary I Committee met on July 13, 1999 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Thomas to explain **House Bill 1173 – AN ACT TO LIMIT DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN APPLICATIONS FOR LICENSES ISSUED BY THE PRIVATE PROTECTIVE SERVICES BOARD AND THE ALARM SYSTEMS LICENSING BOARD AND TO AUTHORIZE THE ALARM SYSTEMS LICENSING BOARD TO ISSUE AN APPRENTICESHIP REGISTRATION PERMIT**, in the absence of Representative McCrary, the bill sponsor.

Senator Carpenter moved to adopt a Proposed Committee Substitute to House Bill 1173 for discussion. The motion carried by a majority voice vote.

Brian Beatty, with the Attorney General's office, was recognized to speak on the bill.

Walker Reagan, Committee Counsel, was recognized to answer questions from the Committee.

Senator Clodfelter moved to give the Proposed Committee Substitute to House Bill 1173 a favorable report. The motion carried by a majority voice vote.

Senator Clodfelter was recognized to explain **House Bill 1222 – AN ACT TO IMPROVE THE STATE COURT SYSTEM BY CREATING A STATE JUDICIAL COUNCIL**, for Representative Baddour, the bill sponsor.

Judge Thomas Ross, Director of the Administrative Office of the Courts, was recognized to speak on the bill.

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

Senator Cooper thanked the Committee members and staff for their hard work during this session and announced that this would be the last meeting until the short session.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary I** will meet at the following time:

DATE: Tuesday, July 13, 1999
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

HB 1173	Personal Information Disclosures	McCrary
HB 1222	State Judicial Council/Funds	Baddour

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - July 13, 1999

HB 1173	Personal Information Disclosures	McCrary
HB 1222	State Judiciary Council/Funds	Baddour

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1173
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/28/99

Short Title: Personal Information Disclosures. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN APPLICATIONS FOR LICENSES ISSUED BY THE PRIVATE PROTECTIVE SERVICES BOARD AND THE ALARM SYSTEMS LICENSING BOARD AND TO AUTHORIZE THE ALARM SYSTEMS LICENSING BOARD TO ISSUE AN APPRENTICESHIP REGISTRATION PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74C-8 is amended by adding a new subsection to read:

"(g) Except for purposes of administering the provisions of this section and for law enforcement purposes, the Board shall not disclose the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 1 misdemeanor."

Section 2. G.S. 74D-2 is amended by adding a new subsection to read:

"(f) Except for purposes of administering the provisions of this section and for law enforcement purposes, the Board shall not disclose the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or

telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 1 misdemeanor."

Section 3. Chapter 74D of the General Statutes is amended by adding a new section to read:

"§ 74D-8.1. Apprenticeship registration permit.

(a) The Board may issue an apprenticeship registration permit to an applicant who is 16 or 17 years old and currently enrolled in high school if the applicant holds a valid drivers license and submits at least three letters of recommendation stating that the applicant is of good moral character as provided in G.S. 74D-2(d)(2). The letters of recommendation shall be from persons who are not related to the individual and at least one of the letters shall be from an official at the school where the applicant is currently enrolled.

(b) There shall be no fee for an apprenticeship registration permit, and the permit shall expire when the holder attains the age of 18 years old. The denial, suspension, or revocation of an apprenticeship registration permit shall be in accordance with the provisions of Chapter 150B of the General Statutes.

(c) The applicant shall not perform services as authorized under this Chapter until after the Board has reviewed his or her application and issued him or her an apprenticeship registration permit. The holder of an apprenticeship registration permit shall be accompanied by a licensee or registered employee while engaged in activities authorized under this Chapter."

Section 4. This act becomes effective on September 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1173-CSRU-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1173
THIS IS A DRAFT 12-JUL-99 15:15:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Personal Information Disclosures. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN APPLICATIONS FOR LICENSES ISSUED BY THE PRIVATE PROTECTIVE SERVICES BOARD AND THE ALARM SYSTEMS LICENSING BOARD AND TO AUTHORIZE THE ALARM SYSTEMS LICENSING BOARD TO ISSUE AN APPRENTICESHIP REGISTRATION PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74C-8 is amended by adding a new subsection to read:

"(g) Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2 and the Board shall not disclose this information unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

Section 2. G.S. 74D-2 is amended by adding a new subsection to read:

"(f) Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2 and the Board shall not disclose this information unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

Section 3. Chapter 74D of the General Statutes is amended by adding a new section to read:

"**§ 74D-8.1. Apprenticeship registration permit.**

(a) The Board may issue an apprenticeship registration permit to an applicant who is 16 or 17 years old and currently enrolled in high school if the applicant holds a valid drivers license and submits at least three letters of recommendation stating that the applicant is of good moral character as provided in G.S. 74D-2(d)(2). The letters of recommendation shall be from persons who are not related to the individual and at least one of the letters shall be from an official at the school where the applicant is currently enrolled.

(b) There shall be no fee for an apprenticeship registration permit, and the permit shall expire when the holder attains the age of 18 years old. The denial, suspension, or revocation of an apprenticeship registration permit shall be in accordance with the provisions of Chapter 150B of the General Statutes.

(c) The applicant shall not perform services as authorized under this Chapter until after the Board has reviewed his or her application and issued him or her an apprenticeship registration permit. The holder of an apprenticeship registration permit shall be accompanied by a licensee or registered employee while engaged in activities authorized under this Chapter."

Section 4. Sections 1 and 2 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 on October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1222*
Committee Substitute Favorable 5/26/99
Committee Substitute #2 Favorable 7/1/99

Short Title: State Judicial Council. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE COURT SYSTEM BY CREATING A STATE 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 Council of the State Bar, 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 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, the guidelines 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 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. The Judicial Department shall implement this act using funds appropriated to the Department for travel and subsistence to reimburse members of the State Judicial Council as provided in G.S. 7A-49.6.

Section 3. This act becomes effective January 1, 2000.

HOUSE BILL 1222:
State Judicial Council.

BILL ANALYSIS

Committee:	Senate J1	**Introduced by:**	Rep. Baddour
Date:	July 13, 1999	**Summary by:**	Jo B. McCants
Version:	3		Committee Co-Counsel

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.

BILL ANALYSIS: 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. The bill prohibits incumbent judicial officials, other than those specifically identified in the bill, and incumbent members of the General Assembly from serving on the Council. Terms for the initial appointments are staggered, but thereafter members of the Council are appointed for four-year terms.

Other specific duties of the Council include the following:

- Recommend performance standards for the courts and judicial officials
- 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.

EFFECTIVE DATE: The bill becomes effective January 1, 2000.

§ 138-5. Per diem and allowances of State boards, etc.

(a) Except as provided in subsections (c) and (f) of this section, members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

(1) Compensation at the rate of fifteen dollars ($15.00) per diem for each day of service;

(2) Reimbursement of subsistence expenses at the rates allowed to State officers and employees by subdivision (3) of G.S. 138-6(a).

(3) Reimbursement of travel expenses at the rates allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a).

(4) For convention registration fees, the actual amount expended, as shown by receipt.

(b) Except as provided in subsections (c) and (f) of this section, the schedules of per diem, subsistence, and travel allowances established in this section shall apply to members of all State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer, excluding those boards, commissions, committees and councils the members of which are now serving without compensation and excluding occupational licensing boards as defined in G.S. 93B-1; and all special statutory provisions relating to per diem, subsistence, and travel allowances are hereby amended to conform to this section.

(c) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 29.

(d) The subsistence reimbursement for actual lodging expenses provided in this section must be documented by a receipt of lodging expenses from a commercial establishment.

(e) Out-of-state travel on official business by members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget.

(f) Members of all State boards, commissions and councils whose salaries or any portion of whose salaries are paid from State funds shall receive no per diem compensation from State funds for their services; provided, however, that members of State boards, commissions and councils who are also members of the General Assembly shall receive, when the General Assembly is not in session, subsistence and travel allowances at the rate set forth in G.S. 120-3.1(a)(2) through (a)(4).

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

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

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

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

(3) For expenses incurred for subsistence, payment of eighty-one dollars ($81.00) per day when traveling in-state or ninety-three dollars ($93.00) per day when traveling out-of-state. Payment of sales tax, lodging tax, local tax, or service fees applied to the cost of lodging are to be paid in addition to the daily subsistence amount. The employee may exceed the part of the ceiling allocated for lodging without approval for overexpenditure provided that the total lodging and food reimbursement does not exceed the maximum provided by this subdivision. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

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

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

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

(4) For convention registration fees not to exceed the actual amount expended as shown by a valid receipt or invoice.

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

(c) Reimbursement of actual costs of overnight lodging, whether in-state or out-of-state, must be documented by a receipt of actual lodging expenses from a commercial establishment. This documentation shall be attached to the reimbursement request. All reimbursement requests shall be filed for approval and payment within 30 days after the travel period for which the reimbursement is being requested.

This summary was substantially contributed to by Tim Hovis, Co-Counsel, House Judiciary IV Committee.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chair

Tuesday, July 13, 1999

SEN. COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2)**1222** State Judicial Council
Sequential Referral: None
Recommended Referral: None

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

H.B.(CS #1)**1173** Personal Information Disclosures
Draft Number: PCS 7275
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary / 7-13-99
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tom Ross	AOC
Wayne Woodard	DOJ
Bryan Beatty	DOJ
Ann Deese	CWA
Holford Mills	NC CWA Council
Melissa Lovell	DOJ
V L McBride	~~AOC~~
Stacy Flannery	NCNCFA
Garrett Feddons	ZDR, PA
Deanne Bonds	AOC
[illegible]	AOC
David Ferrell	NCCCC, PA